

Senator Wayne L. Niederhauser proposes the following substitute bill:

**TAX CHANGES**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John Dougall**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**General Description:**

This bill amends the Corporate Franchise and Income Taxes chapter, the Individual Income Tax Act, the Sales and Use Tax Act, the Transportation Code, and related provisions to address the income taxation of individuals, estates, and trusts, including real estate investment trusts, a change in a state sales and use tax rate, a sales tax refund for qualified emergency food agencies, a sales and use tax exemption, and the expenditure of certain state sales and use tax revenues.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ addresses the income taxation of a real estate investment trust or income from a real estate investment trust;
- ▶ repeals provisions imposing an individual income tax on the basis of graduated brackets and rates;
- ▶ provides that an individual income tax is imposed on the basis of a single tax rate, including:
  - modifying and repealing definitions;
  - modifying additions to and subtractions from adjusted gross income;



- 26           • addressing the taxation of a nonresident individual or part-year resident
- 27 individual; and
- 28           • addressing provisions relating to the determination and reporting of income tax
- 29 liability and information;
- 30           ▶ addresses the apportionment of business income for purposes of the individual
- 31 income tax;
- 32           ▶ modifies the income taxation of estates and trusts, including:
- 33           • providing definitions;
- 34           • providing that the tax is calculated on the basis of unadjusted income;
- 35           • modifying additions to and subtractions from unadjusted income; and
- 36           • addressing provisions relating to the determination and reporting of income tax
- 37 liability and information;
- 38           ▶ addresses the taxation of pass-through entities, including:
- 39           • providing definitions; and
- 40           • renumbering and amending provisions relating to pass-through entities;
- 41           ▶ rennumbers and amends provisions relating to tax credits, including tax credits for:
- 42           • a taxpayer;
- 43           • an investment in the Utah Educational Savings Plan Trust; or
- 44           • retirement income;
- 45           ▶ provides nonrefundable tax credits for:
- 46           • a trust or estate;
- 47           • a contribution to a medical care savings account;
- 48           • capital gain transactions;
- 49           • certain amounts paid for insurance under a health benefit plan; or
- 50           • certain solar projects;
- 51           ▶ requires the Utah Tax Review Commission to study the solar projects tax credits;
- 52           ▶ provides that a person may not claim a nonrefundable renewable energy systems tax
- 53 credit for certain purchases for which the person claims a tax credit for certain solar
- 54 projects;
- 55           ▶ modifies the refundable renewable energy tax credit to clarify that an estate or trust
- 56 may claim the tax credit;

- 57 ▶ addresses the apportionment of tax credits;
- 58 ▶ addresses the following relating to a medical care savings account:
  - 59 • taxation;
  - 60 • penalties; and
  - 61 • interest;
- 62 ▶ amends provisions relating to the taxation of an investment in the Utah Educational
- 63 Savings Plan Trust;
- 64 ▶ renumbers and amends the individual income tax contribution provisions;
- 65 ▶ addresses the administration of income tax contributions;
- 66 ▶ grants rulemaking authority to:
  - 67 • the State Tax Commission; and
  - 68 • the Insurance Department;
- 69 ▶ increases a state sales and use tax rate from 4.65% to 4.70%;
- 70 ▶ provides that a .025% tax rate on certain sales and use transactions shall be
- 71 deposited into the Critical Highway Needs Fund and the Transportation Investment
- 72 Fund of 2005;
- 73 ▶ provides that a .025% tax rate on certain sales and use transactions shall be
- 74 deposited into the Transportation Fund to be expended to address chokepoints in
- 75 construction management;
- 76 ▶ extends the expiration date for certain sales and use tax exemptions;
- 77 ▶ provides a sales and use tax exemption for sales of fuel to a common carrier that is a
- 78 railroad for use in a locomotive engine;
- 79 ▶ provides that state sales and use tax revenues deposited into the Transportation
- 80 Fund are not appropriated into the class B and class C roads account;
- 81 ▶ modifies the statutes creating the Transportation Investment Fund of 2005 and the
- 82 Critical Highway Needs Fund to address the sources of revenue that may be
- 83 deposited into the funds; and
- 84 ▶ makes technical changes.

85 **Monies Appropriated in this Bill:**

86 None

87 **Other Special Clauses:**

88 This bill provides effective dates.

89 This bill coordinates with the following to provide for apportionment of tax credits:

90 (1) H.B. 158, Tax Credit for Military Retired Pay;

91 (2) H.B. 199, Tax Credits for Energy Efficient Residences;

92 (3) H.B. 279, Tax Incentives for Military Members;

93 (4) H.B. 351, Individual Income Tax - Health Insurance; and

94 (5) H.B. 360, Individual Income Tax - Long-Term Care Insurance Premiums.

95 **Utah Code Sections Affected:**

96 **AMENDS:**

97 **9-4-802**, as last amended by Laws of Utah 2003, Chapter 132

98 **9-4-803**, as last amended by Laws of Utah 2003, Chapter 132

99 **23-14-13**, as last amended by Laws of Utah 1995, Chapter 211

100 **23-14-14.1**, as enacted by Laws of Utah 2003, Chapter 162

101 **26-18a-3**, as last amended by Laws of Utah 1997, Chapter 1

102 **26-18a-4**, as last amended by Laws of Utah 1997, Chapter 1

103 **26-48-102**, as enacted by Laws of Utah 2006, Chapter 280

104 **31A-32a-101**, as enacted by Laws of Utah 1999, Chapter 131

105 **31A-32a-103**, as enacted by Laws of Utah 1999, Chapter 131

106 **31A-32a-104**, as enacted by Laws of Utah 1999, Chapter 131

107 **31A-32a-105**, as enacted by Laws of Utah 1999, Chapter 131

108 **31A-32a-106**, as last amended by Laws of Utah 2001, Chapter 53

109 **31A-32a-107**, as enacted by Laws of Utah 1999, Chapter 131

110 **48-2c-117**, as enacted by Laws of Utah 2001, Chapter 260

111 **53B-8a-106**, as last amended by Laws of Utah 2007, Chapter 100

112 **59-7-101**, as last amended by Laws of Utah 2004, Chapter 54

113 **59-7-105**, as last amended by Laws of Utah 2007, Chapter 100

114 **59-7-106**, as last amended by Laws of Utah 2007, Chapter 100

115 **59-7-116.5**, as enacted by Laws of Utah 1995, Chapter 311

116 **59-7-402**, as last amended by Laws of Utah 2004, Chapter 54

117 **59-7-614**, as repealed and reenacted by Laws of Utah 2007, Chapter 288

118 **59-10-103**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2

- 119           **59-10-104**, as last amended by Laws of Utah 2007, Chapter 288
- 120           **59-10-104.1**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 121           **59-10-110**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 122           **59-10-114**, as last amended by Laws of Utah 2007, Chapter 100
- 123           **59-10-115**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 124           **59-10-116**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 125           **59-10-117**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 126           **59-10-118**, as last amended by Laws of Utah 1995, Chapter 311
- 127           **59-10-119**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 128           **59-10-120**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 129           **59-10-121**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 130           **59-10-122**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 131           **59-10-123**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 132           **59-10-124**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 133           **59-10-125**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 134           **59-10-126**, as last amended by Laws of Utah 1995, Chapter 311
- 135           **59-10-201**, as last amended by Laws of Utah 2007, Chapter 100
- 136           **59-10-201.1**, as last amended by Laws of Utah 2006, Chapter 223
- 137           **59-10-202**, as last amended by Laws of Utah 2007, Chapter 100
- 138           **59-10-204**, as last amended by Laws of Utah 2006, Chapter 223
- 139           **59-10-205**, as last amended by Laws of Utah 2006, Chapter 223
- 140           **59-10-207**, as last amended by Laws of Utah 2006, Chapter 223
- 141           **59-10-209.1**, as enacted by Laws of Utah 2006, Chapter 223
- 142           **59-10-210**, as last amended by Laws of Utah 2006, Chapter 223
- 143           **59-10-507**, as last amended by Laws of Utah 2003, Chapter 198
- 144           **59-10-1014**, as last amended by Laws of Utah 2007, Chapters 122 and 288
- 145           **59-10-1106**, as enacted by Laws of Utah 2007, Chapter 288
- 146           **59-12-103**, as last amended by Laws of Utah 2007, Chapters 9, 101, 126, 206, and 288
- 147           **59-12-104**, as last amended by Laws of Utah 2007, Chapters 76, 195, 214, 224, 288,
- 148           295, and 329
- 149           **72-2-107**, as last amended by Laws of Utah 2007, Chapter 126

150           **72-2-124**, as last amended by Laws of Utah 2006, Chapters 11 and 135

151           **72-2-125**, as enacted by Laws of Utah 2007, Chapter 206

152 ENACTS:

153           **59-7-614.2**, Utah Code Annotated 1953

154           **59-10-1020**, Utah Code Annotated 1953

155           **59-10-1021**, Utah Code Annotated 1953

156           **59-10-1022**, Utah Code Annotated 1953

157           **59-10-1023**, Utah Code Annotated 1953

158           **59-10-1024**, Utah Code Annotated 1953

159           **59-10-1301**, Utah Code Annotated 1953

160           **59-10-1302**, Utah Code Annotated 1953

161           **59-10-1303**, Utah Code Annotated 1953

162           **59-10-1401**, Utah Code Annotated 1953

163           **59-10-1402**, Utah Code Annotated 1953

164 RENUMBERS AND AMENDS:

165           **59-10-1002.1**, (Renumbered from 59-10-1016, as renumbered and amended by Laws of  
166 Utah 2006, Chapter 223)

167           **59-10-1002.2**, (Renumbered from 59-10-1206.9, as enacted by Laws of Utah 2007,  
168 Chapter 288)

169           **59-10-1017**, (Renumbered from 59-10-1206.1, as enacted by Laws of Utah 2007,  
170 Chapter 100)

171           **59-10-1018**, (Renumbered from 59-10-1206.2, as enacted by Laws of Utah 2007,  
172 Chapter 288)

173           **59-10-1019**, (Renumbered from 59-10-1206.3, as enacted by Laws of Utah 2007,  
174 Chapter 288)

175           **59-10-1304**, (Renumbered from 59-10-551, as last amended by Laws of Utah 2006,  
176 Chapter 280)

177           **59-10-1305**, (Renumbered from 59-10-530, as last amended by Laws of Utah 1997,  
178 Chapter 12)

179           **59-10-1306**, (Renumbered from 59-10-530.5, as last amended by Laws of Utah 2003,  
180 Chapter 132)

181           **59-10-1307**, (Renumbered from 59-10-549, as last amended by Laws of Utah 2005,  
182 Chapter 208)

183           **59-10-1308**, (Renumbered from 59-10-550, as last amended by Laws of Utah 1997,  
184 Chapters 1 and 12)

185           **59-10-1309**, (Renumbered from 59-10-550.1, as enacted by Laws of Utah 2003,  
186 Chapter 162)

187           **59-10-1310**, (Renumbered from 59-10-550.2, as enacted by Laws of Utah 2006,  
188 Chapter 280)

189           **59-10-1311**, (Renumbered from 59-10-547, as last amended by Laws of Utah 1998,  
190 Chapter 269)

191           **59-10-1312**, (Renumbered from 59-10-548, as last amended by Laws of Utah 2002,  
192 Chapters 107 and 256)

193           **59-10-1403**, (Renumbered from 59-10-301, as renumbered and amended by Laws of  
194 Utah 1987, Chapter 2)

195           **59-10-1404**, (Renumbered from 59-10-302, as renumbered and amended by Laws of  
196 Utah 1987, Chapter 2)

197           **59-10-1405**, (Renumbered from 59-10-303, as last amended by Laws of Utah 2006,  
198 Fourth Special Session, Chapter 2)

199 REPEALS:

200           **59-10-206**, as last amended by Laws of Utah 1995, Chapter 345

201           **59-10-801**, as last amended by Laws of Utah 1997, Chapter 159

202           **59-10-1201**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2

203           **59-10-1202**, as last amended by Laws of Utah 2007, Chapters 100 and 288

204           **59-10-1203**, as last amended by Laws of Utah 2007, Chapters 100 and 288

205           **59-10-1204**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2

206           **59-10-1205**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2

207           **59-10-1206**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2

208           **59-10-1207**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2

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

211           Section 1. Section **9-4-802** is amended to read:

212 **9-4-802. Purposes of Homeless Coordinating Committee -- Uses of Pamela**  
213 **Atkinson Homeless Trust Account.**

214 (1) (a) The Homeless Coordinating Committee shall work to ensure that services  
215 provided to the homeless by state agencies, local governments, and private organizations are  
216 provided in a cost-effective manner.

217 (b) Programs funded by the committee shall emphasize emergency housing and  
218 self-sufficiency, including placement in meaningful employment or occupational training  
219 activities and, where needed, special services to meet the unique needs of the homeless who  
220 have families with children, or who are mentally ill, disabled, or suffer from other serious  
221 challenges to employment and self-sufficiency.

222 (c) The committee may also fund treatment programs to ameliorate the effects of  
223 substance abuse or a disability.

224 (2) The committee members designated in Subsection 9-4-801(2) shall:

225 (a) award contracts funded by the Pamela Atkinson Homeless Trust Account with the  
226 advice and input of those designated in Subsection 9-4-801(3);

227 (b) consider need, diversity of geographic location, coordination with or enhancement  
228 of existing services, and the extensive use of volunteers; and

229 (c) give priority for funding to programs that serve the homeless who are mentally ill  
230 and who are in families with children.

231 (3) (a) In any fiscal year, no more than 80% of the funds in the Pamela Atkinson  
232 Homeless Trust Account may be allocated to organizations that provide services only in Salt  
233 Lake, Davis, Weber, and Utah Counties.

234 (b) The committee may:

235 (i) expend up to 3% of its annual appropriation for administrative costs associated with  
236 the allocation of funds from the Pamela Atkinson Homeless Trust Account, and up to 2% of its  
237 annual appropriation for marketing the account and soliciting donations to the account; and

238 (ii) pay for the initial costs of the State Tax Commission in implementing Section  
239 ~~[59-10-530.5]~~ 59-10-1306 from the account.

240 (4) (a) The committee may not expend, except as provided in Subsection (4)(b), an  
241 amount equal to the greater of \$50,000 or 20% of the amount donated to the Pamela Atkinson  
242 Homeless Trust Account during fiscal year 1988-89.

243 (b) If there are decreases in contributions to the account, the committee may expend  
244 funds held in reserve to provide program stability, but the committee shall reimburse the  
245 amounts of those expenditures to the reserve fund.

246 (5) The committee shall make an annual report to the Economic Development and  
247 Human Resources Appropriations Subcommittee regarding the programs and services funded  
248 by contributions to the Pamela Atkinson Homeless Trust Account.

249 (6) The moneys in the Pamela Atkinson Homeless Trust Account shall be invested by  
250 the state treasurer according to the procedures and requirements of Title 51, Chapter 7, State  
251 Money Management Act, except that all interest or other earnings derived from the fund  
252 moneys shall be deposited in the fund.

253 Section 2. Section **9-4-803** is amended to read:

254 **9-4-803. Creation of Pamela Atkinson Homeless Trust Account.**

255 (1) There is created a restricted account within the General Fund to be known as the  
256 Pamela Atkinson Homeless Trust Account.

257 (2) Private contributions received under this section and Section [~~59-10-530.5~~]  
258 59-10-1306 shall be deposited into the account to be used only for programs described in  
259 Section 9-4-802.

260 (3) Money shall be appropriated from the account to the State Homeless Coordinating  
261 Committee in accordance with the Utah Budgetary Procedures Act.

262 (4) The State Homeless Coordinating Committee may accept transfers, grants, gifts,  
263 bequests, or any money made available from any source to implement this part.

264 Section 3. Section **23-14-13** is amended to read:

265 **23-14-13. Wildlife Resources Account.**

266 (1) The Wildlife Resources Account [~~within the General Fund~~] is established within  
267 the General Fund.

268 (2) The following monies shall be deposited into the Wildlife Resources Account:

269 (a) revenue from the sale of licenses, permits, tags, and certificates of registration  
270 issued under this title or a rule or proclamation of the Wildlife Board, except as otherwise  
271 provided by this title;

272 (b) revenue from the sale, lease, rental, or other granting of rights of real or personal  
273 property acquired with revenue specified in Subsection (2)(a);

274 (c) revenue from fines and forfeitures for violations of this title or any rule,  
275 proclamation, or order of the Wildlife Board, minus court costs not to exceed the schedule  
276 adopted by the Judicial Council;

277 (d) funds appropriated from the General Fund by the Legislature pursuant to Section  
278 23-19-39;

279 (e) other monies received by the division under any provision of this title, except as  
280 otherwise provided by this title; ~~and~~

281 (f) contributions made in accordance with Section 59-10-1305; and

282 ~~[(f)] (g) interest, dividends, or other income earned on account monies.~~

283 (3) Monies in the Wildlife Resources Account shall be used for the administration of  
284 this title.

285 Section 4. Section **23-14-14.1** is amended to read:

286 **23-14-14.1. Wolf Depredation and Management Restricted Account -- Interest --**  
287 **Use of contributions and interest.**

288 (1) There is created within the General Fund the Wolf Depredation and Management  
289 Restricted Account.

290 (2) The account shall be funded by contributions deposited into the Wolf Depredation  
291 and Management Restricted Account in accordance with Section ~~[59-10-550.1]~~ 59-10-1309.

292 (3) (a) The Wolf Depredation and Management Restricted Account shall earn interest.

293 (b) Interest earned on the Wolf Depredation and Management Restricted Account shall  
294 be deposited into the Wolf Depredation and Management Restricted Account.

295 (4) (a) Subject to Subsection (4)(b), contributions and interest deposited into the Wolf  
296 Depredation and Management Restricted Account shall be used by the Division of Wildlife  
297 Resources for:

298 (i) payments for livestock depredation by wolves; or

299 (ii) wolf management.

300 (b) Contributions and interest deposited into the Wolf Depredation and Management  
301 Restricted Account may be used for the purposes described in Subsection (4)(a) only to the  
302 extent permitted by federal law.

303 Section 5. Section **26-18a-3** is amended to read:

304 **26-18a-3. Purpose of committee.**

305 (1) The committee shall work to:  
306 (a) provide financial assistance for initial medical expenses of children who need organ  
307 transplants;  
308 (b) obtain the assistance of volunteer and public service organizations; and  
309 (c) fund activities as the committee designates for the purpose of educating the public  
310 about the need for organ donors.

311 (2) (a) The committee is responsible for awarding financial assistance funded by the  
312 trust account.

313 (b) The financial assistance awarded by the committee under Subsection (1)(a) shall be  
314 in the form of interest free loans. The committee may establish terms for repayment of the  
315 loans, including a waiver of the requirement to repay any awards if, in the committee's  
316 judgment, repayment of the loan would impose an undue financial burden on the recipient.

317 (c) In making financial awards under Subsection (1)(a), the committee shall consider:

318 (i) need;

319 (ii) coordination with or enhancement of existing services or financial assistance,  
320 including availability of insurance or other state aid;

321 (iii) the success rate of the particular organ transplant procedure needed by the child;  
322 and

323 (iv) the extent of the threat to the child's life without the organ transplant.

324 (3) The committee may only provide the assistance described in this section to children  
325 who have resided in Utah, or whose legal guardians have resided in Utah for at least six months  
326 prior to the date of assistance under this section.

327 (4) (a) The committee may expend up to 5% of its annual appropriation for  
328 administrative costs associated with the allocation of funds from the trust account.

329 (b) The administrative costs shall be used for the costs associated with staffing the  
330 committee and for State Tax Commission costs in implementing Section [~~59-10-550~~]  
331 59-10-1308.

332 (5) The committee shall make an annual report to the Health and Human Services  
333 Appropriations Subcommittee regarding the programs and services funded by contributions to  
334 the trust account.

335 Section 6. Section **26-18a-4** is amended to read:

336 **26-18a-4. Creation of Kurt Oscarson Children's Organ Transplant Trust**

337 **Account.**

338 (1) There is created a restricted account within the General Fund pursuant to Section  
339 51-5-4 known as the Kurt Oscarson Children's Organ Transplant Trust Account. Private  
340 contributions received under this section and Section [~~59-10-550~~] 59-10-1308 shall be  
341 deposited into the trust account to be used only for the programs and purposes described in  
342 Section 26-18a-3.

343 (2) Money shall be appropriated from the trust account to the committee in accordance  
344 with Title 63, Chapter 38, Budgetary Procedures Act.

345 (3) In addition to funds received under Section [~~59-10-550~~] 59-10-1308, the committee  
346 may accept transfers, grants, gifts, bequests, or any money made available from any source to  
347 implement this chapter.

348 Section 7. Section **26-48-102** is amended to read:

349 **26-48-102. Cat and Dog Community Spay and Neuter Program Restricted**

350 **Account -- Interest -- Use of contributions and interest.**

351 (1) There is created within the General Fund the Cat and Dog Community Spay and  
352 Neuter Program Restricted Account.

353 (2) The account shall be funded by contributions deposited into the Cat and Dog  
354 Community Spay and Neuter Program Restricted Account in accordance with Section  
355 [~~59-10-550.2~~] 59-10-1310.

356 (3) (a) The Cat and Dog Community Spay and Neuter Program Restricted Account  
357 shall earn interest.

358 (b) Interest earned on the Cat and Dog Community Spay and Neuter Program  
359 Restricted Account shall be deposited into the Cat and Dog Community Spay and Neuter  
360 Program Restricted Account.

361 (4) The department shall distribute contributions and interest deposited into the Cat and  
362 Dog Community Spay and Neuter Program Restricted Account to one or more organizations  
363 that:

364 (a) are exempt from federal income taxation under Section 501(c)(3), Internal Revenue  
365 Code;

366 (b) operate a mobile spay and neuter clinic for cats and dogs;

367 (c) provide annual spay and neuter services at the mobile spay and neuter clinic  
368 described in Subsection (4)(b):

369 (i) to one or more communities in at least 20 counties in the state; and  
370 (ii) by veterinarians who are licensed by Title 58, Chapter 28, Veterinary Practice Act;

371 and

372 (d) (i) spay and neuter cats and dogs owned by persons having low incomes; and  
373 (ii) have established written guidelines for determining what constitutes a person  
374 having a low income in accordance with any rules made by the department as authorized by  
375 Subsection (5)(c).

376 (5) (a) An organization described in Subsection (4) may apply to the department to  
377 receive a distribution in accordance with Subsection (4).

378 (b) An organization that receives a distribution from the department in accordance with  
379 Subsection (4):

380 (i) shall expend the distribution only to spay or neuter dogs and cats:

381 (A) owned by persons having low incomes;

382 (B) by veterinarians who are licensed by Title 58, Chapter 28, Veterinary Practice Act;

383 (C) through a statewide voucher program; and

384 (D) at a location that:

385 (I) is not a mobile spay and neuter clinic; and

386 (II) does not receive any funding from a governmental entity; and

387 (ii) may not expend the distribution for any administrative cost relating to an  
388 expenditure authorized by Subsection (5)(b)(i).

389 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
390 department may make rules:

391 (i) providing procedures and requirements for an organization to apply to the  
392 department to receive a distribution in accordance with Subsection (4); and

393 (ii) to define what constitutes a person having a low income.

394 Section 8. Section **31A-32a-101** is amended to read:

395 **31A-32a-101. Title and scope.**

396 (1) This chapter is known as the "Medical Care Savings Account Act."

397 (2) (a) This chapter applies only to a medical care savings [~~accounts~~] account

398 established for the purpose of seeking a tax ~~[deduction]~~ credit under Section ~~[59-10-114]~~  
399 59-10-1021.

400 (b) This chapter does not apply to a medical care savings ~~[accounts that will not be~~  
401 ~~subject to tax deductions under Section 59-10-114]~~ account with respect to which a tax credit is  
402 not claimed under Section 59-10-1021.

403 Section 9. Section ~~31A-32a-103~~ is amended to read:

404 **31A-32a-103. Establishing medical care savings accounts.**

405 ~~[(1) For tax years beginning 1995, both of the following apply:]~~

406 (1) For a taxable year beginning on or after January 1, 1995:

407 (a) an employer, except as otherwise provided by contract or a collective bargaining  
408 agreement, may offer a medical care savings account program to the employer's employees;  
409 ~~[and]~~ or

410 (b) a resident individual may establish a medical care savings account program for the  
411 individual or for the individual's dependents.

412 (2) (a) A contribution into an account made by an employer on behalf of an employee,  
413 or made by an individual account holder may not exceed the greater of:

414 ~~[(a)]~~ (i) \$2,000 in any ~~[tax]~~ taxable year; or

415 (ii) an amount of money equal to the sum of all eligible medical expenses paid by the  
416 employee or account holder ~~[in]~~ for that ~~[tax]~~ taxable year on behalf of the employee, account  
417 holder, or the employee's or account holder's spouse or dependents.

418 (b) For purposes of Subsection (2)(a)(ii), eligible medical expenses ~~[as defined in~~  
419 ~~Subsection 31A-32a-102(5);]~~ are limited to expenses in ~~[that tax year which]~~ the taxable year  
420 that an insurance carrier has applied to the employee's or account holder's deductible.

421 (3) An employer that offers a medical care savings account program shall, before  
422 making any contributions:

423 (a) inform all employees in writing of the fact that these contributions may not be  
424 deductible under the federal tax laws; and

425 (b) obtain from the employee a written election to participate in the medical care  
426 savings account program.

427 (4) Except as provided in Sections 31A-32a-105 and 59-10-114, principal contributed  
428 to and interest earned on a medical care savings account and money reimbursed to an employee

429 or account holder for eligible medical expenses are exempt from taxation.

430 (5) (a) An employer may select a single account administrator for all of the employer's  
431 employee's medical care savings accounts.

432 (b) If a single account administrator is not selected, an employer may contribute  
433 directly to the account holder's individual medical care savings account.

434 Section 10. Section **31A-32a-104** is amended to read:

435 **31A-32a-104. Administration of medical care savings account.**

436 (1) An account administrator shall administer the medical care savings account from  
437 which the payment of claims is made and has a fiduciary duty to the person for whose benefit  
438 the account administrator administers an account.

439 (2) (a) Except as provided in Subsection 31A-32a-105(1), the account administrator  
440 shall use the funds held in a medical care savings account solely for the purpose of paying or  
441 reimbursing the employee or account holder for eligible medical expenses of the employee or  
442 account holder or of the employee's or account holder's dependents.

443 (b) The commissioner shall adopt rules concerning the coordination of benefits  
444 between a medical care savings account and medical expenses payable from automobile  
445 insurance policies, workers' compensation insurance policies, or other health care insurance  
446 policies or contracts.

447 (3) The employee or account holder may submit documentation of eligible medical  
448 expenses paid by the employee or account holder in the [~~tax~~ taxable] year to the account  
449 administrator, and the account administrator shall reimburse the employee or account holder  
450 from the employee's or account holder's account for eligible medical expenses.

451 (4) If an employer makes contributions to a medical care savings account program on a  
452 periodic installment basis, the employer may advance to an employee an amount necessary to  
453 cover eligible medical expenses incurred that exceed the amount in the employee's medical  
454 care savings account at the time the expense is incurred if the employee agrees to repay the  
455 advance.

456 Section 11. Section **31A-32a-105** is amended to read:

457 **31A-32a-105. Withdrawals -- Termination -- Transfers.**

458 (1) Subject to Subsection (3), if the employee or account holder withdraws money for  
459 any purpose other than a medical expense at any time in which the balance in the account is

460 below \$4,000 [~~all of the following apply~~]:

461 (a) the amount of the withdrawal [~~is income for the purposes of Title 59, Chapter 10,~~  
462 ~~Individual Income Tax Act~~] shall be added to adjusted gross income in accordance with  
463 Section 59-10-114; and

464 (b) the administrator shall withhold from the amount of the withdrawal, and on behalf  
465 of the employee or account holder shall pay a penalty to the State Tax Commission equal to  
466 10% of the amount of the withdrawal.

467 (2) If an employee or account holder withdraws money from the employee's or account  
468 holder's medical care savings account for any purpose other than a medical expense, but the  
469 withdrawal occurs when the balance in the medical care savings account is over \$4,000, and  
470 the withdrawal will not result in the account balance dropping below \$4,000, the amount of the  
471 withdrawal:

472 (a) is not subject to the penalties described in Subsection (1)(b); and  
473 [~~(b) is subject to taxation as provided in Subsection (1)(a).~~]

474 (b) shall be added to adjusted gross income in accordance with Section 59-10-114.

475 (3) The amount of a disbursement of any assets of a medical care savings account  
476 pursuant to a filing for protection under [~~Title 11 of the United States Code,~~] 11 U.S.C. Sec.  
477 101 to 1330, by an employee, account holder, or person for whose benefit the account was  
478 established:

479 (a) is not considered a withdrawal for purposes of this section; and

480 [~~(b) is subject to taxation under Title 59, Chapter 10, Individual Income Tax Act.~~]

481 (b) shall be added to adjusted gross income in accordance with Section 59-10-114.

482 (4) (a) Upon the death of the employee or account holder, the account administrator  
483 shall distribute the principal and accumulated interest of the medical care savings account to  
484 the estate of the employee or account holder.

485 (b) A distribution under this Subsection (4) is not subject to the penalties described in  
486 Subsection (1)(b).

487 (5) (a) If an employee is no longer employed by an employer that participates in a  
488 medical care savings account program, and if the employee's account is administered by the  
489 employer's account administrator, the money in the medical care savings account may be used  
490 for the benefit of the employee or the employee's dependents in accordance with this chapter,

491 and ~~[remains exempt from taxation]~~ may not be added to adjusted gross income under Section  
492 59-10-114 if the employee, not more than 60 days after the employee's final day of  
493 employment:

494 (i) transfers the account to a new account administrator; or

495 (ii) (A) requests in writing to the former employer's account administrator that the  
496 account remain with that administrator; and

497 (B) the account administrator agrees to retain the account.

498 (b) Not more than 30 days after the expiration of the 60 days described in Subsection  
499 (5)(a), if an account administrator has not accepted the former employee's account, the  
500 employer shall mail a check to the former employee at the employee's last-known address equal  
501 to the amount in the account on that day.

502 (c) The amount mailed to the employee ~~[is subject to taxation pursuant to Subsection~~  
503 ~~(4)(a)]~~ under Subsection (5)(b) shall be added to adjusted gross income in accordance with  
504 Section 59-10-114, but is not subject to the penalties under Subsection (1)(b).

505 (d) If an employee becomes employed with a different employer that participates in a  
506 medical care savings account program, the employee may transfer the employee's medical care  
507 savings account to that new employer's account administrator.

508 (e) If an account holder becomes an employee of an employer that participates in a  
509 medical care savings account program, the account holder may transfer the account holder's  
510 account to the employer's account administrator.

511 Section 12. Section **31A-32a-106** is amended to read:

512 **31A-32a-106. Regulation of account administrators -- Administration of addition**  
513 **to adjusted gross income and tax credit -- Rulemaking authority.**

514 (1) The department shall regulate account administrators and may adopt rules  
515 necessary to administer this chapter.

516 (2) The State Tax Commission may adopt rules necessary to monitor and implement  
517 the ~~[tax deductions established by this chapter and Section 59-10-114.];~~

518 (a) amounts required to be added to adjusted gross income in accordance with Sections  
519 31A-32a-105 and 59-10-114; or

520 (b) amount claimed as a tax credit in accordance with Section 59-10-1021.

521 Section 13. Section **31A-32a-107** is amended to read:

522 **31A-32a-107. Penalties for noncompliance with tax provisions.**

523 (1) An account administrator who fails to comply with ~~[the statutes and rules~~  
524 ~~governing the tax deduction established by this chapter and Section 59-10-114]~~ a provision  
525 described in Subsection (2) is subject to:

- 526 ~~[(+)]~~ (a) the civil penalties provided in Section 59-1-401; and
- 527 ~~[(2)]~~ (b) interest at the rate and in the manner provided in Section 59-1-402.

528 (2) The following provisions apply to Subsection (1):

529 (a) a provision of this chapter relating to:

- 530 (i) an addition to income made in accordance with Section 59-10-114; or
- 531 (ii) a tax credit allowed by Section 59-10-1021; or

532 (b) a provision of Title 59, Chapter 10, Individual Income Tax Act, relating to:

- 533 (i) an addition to income made in accordance with Section 59-10-114; or
- 534 (ii) a tax credit allowed by Section 59-10-1021.

535 Section 14. Section **48-2c-117** is amended to read:

536 **48-2c-117. Taxation of limited liability companies.**

537 A company established under this chapter or a foreign company transacting business in  
538 this state shall be taxed as provided in ~~[Section 59-10-801]~~ Subsection 59-10-1403(4).

539 Section 15. Section **53B-8a-106** is amended to read:

540 **53B-8a-106. Account agreements.**

541 The Utah Educational Savings Plan Trust may enter into account agreements with  
542 account owners on behalf of beneficiaries under the following terms and agreements:

543 (1) (a) An account agreement may require an account owner to agree to invest a  
544 specific amount of money in the Utah Educational Savings Plan Trust for a specific period of  
545 time for the benefit of a specific beneficiary, not to exceed an amount determined by the  
546 program administrator.

547 (b) Account agreements may be amended to provide for adjusted levels of payments  
548 based upon changed circumstances or changes in educational plans.

549 (c) An account owner may make additional optional payments as long as the total  
550 payments for a specific beneficiary do not exceed the total estimated higher education costs as  
551 determined by the program administrator.

552 (d) Subject to Subsection (1)(f), the maximum amount of a qualified investment that a

553 corporation that is an account owner may subtract from unadjusted income for a taxable year in  
554 accordance with Title 59, Chapter 7, Corporate Franchise and Income Taxes, is [~~\$1,560~~  
555 \$1,650] for each individual beneficiary for the taxable year beginning on or after January 1,  
556 [~~2006~~] 2008, but beginning on or before December 31, [~~2006~~] 2008.

557 (e) Subject to Subsection (1)(f), the maximum amount of a qualified investment that  
558 may be [~~subtracted from federal taxable income of a resident or nonresident individual for a~~  
559 ~~taxable year in accordance with Section 59-10-114, a resident or nonresident estate or trust for~~  
560 ~~a taxable year in accordance with Section 59-10-202, or~~] used as the basis for claiming a tax  
561 credit [~~for a taxable year by a resident or nonresident individual~~] in accordance with Section  
562 [~~59-10-1206.1~~] 59-10-1017, is:

563 (i) for a resident or nonresident estate or trust that is an account owner, [~~\$1,560~~] \$1,650  
564 for each individual beneficiary for the taxable year beginning on or after January 1, [~~2006~~]  
565 2008, but beginning on or before December 31, [~~2006~~] 2008;

566 (ii) for a resident or nonresident individual that is an account owner, other than a  
567 husband and wife who are account owners and file a single return jointly under Title 59,  
568 Chapter 10, Individual Income Tax Act, [~~\$1,560~~] \$1,650 for each individual beneficiary for the  
569 taxable year beginning on or after January 1, [~~2006~~] 2008, but beginning on or before  
570 December 31, [~~2006~~] 2008; or

571 (iii) for a husband and wife who are account owners and file a single return jointly  
572 under Title 59, Chapter 10, Individual Income Tax Act, [~~\$3,120~~] \$3,300 for each individual  
573 beneficiary:

574 (A) for the taxable year beginning on or after January 1, [~~2006~~] 2008, but beginning on  
575 or before December 31, [~~2006~~] 2008; and

576 (B) regardless of whether the Utah Educational Savings Plan Trust has entered into:

577 (I) a separate account agreement with each spouse; or

578 (II) a single account agreement with both spouses jointly.

579 (f) (i) For taxable years beginning on or after January 1, [~~2007~~] 2009, the program  
580 administrator shall increase or decrease the maximum amount of a qualified investment  
581 described in Subsections (1)(d) and (1)(e)(i) and (ii), by a percentage equal to the percentage  
582 difference between the consumer price index for the preceding calendar year and the consumer  
583 price index for the calendar year [~~2005~~] 2007.

584 (ii) After making an increase or decrease required by Subsection (1)(f)(i), the program  
585 administrator shall:

586 (A) round the maximum amount of the qualified investments described in Subsections  
587 (1)(d) and (1)(e)(i) and (ii) increased or decreased under Subsection (1)(f)(i) to the nearest ten  
588 dollar increment; and

589 (B) increase or decrease the maximum amount of the qualified investment described in  
590 Subsection (1)(e)(iii) so that the maximum amount of the qualified investment described in  
591 Subsection (1)(e)(iii) is equal to the product of:

592 (I) the maximum amount of the qualified investment described in Subsection (1)(e)(ii)  
593 as rounded under Subsection (1)(f)(ii)(A); and

594 (II) two.

595 (iii) For purposes of Subsections (1)(f)(i) and (ii), the program administrator shall  
596 calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue  
597 Code.

598 (2) (a) (i) Beneficiaries designated in account agreements must be designated after  
599 birth and before age 19 for an account owner to:

600 (A) subtract a qualified investment from income under~~[(F)]~~ Title 59, Chapter 7,  
601 Corporate Franchise and Income Taxes; or

602 ~~[(H) Section 59-10-114; or]~~

603 ~~[(H) Section 59-10-202; or]~~

604 (B) use a qualified investment as the basis for claiming a tax credit in accordance with  
605 Section ~~[59-10-1206.1]~~ 59-10-1017.

606 (ii) If the beneficiary is designated after birth and before age 19, the payment of  
607 benefits provided under the account agreement must begin not later than the beneficiary's 27th  
608 birthday.

609 (b) (i) Account owners may designate ~~[beneficiaries]~~ a beneficiary age 19 or older, but  
610 investments for ~~[those beneficiaries]~~ that beneficiary are not eligible ~~[for subtraction from~~  
611 ~~federal taxable income.]~~ to be:

612 (A) subtracted from income under Title 59, Chapter 7, Corporate Franchise and Income  
613 Taxes; or

614 (B) used as the basis for claiming a tax credit in accordance with Section 59-10-1017.

615 (ii) If a beneficiary age 19 or older is designated, the payment of benefits provided  
616 under the account agreement must begin not later than ten years from the account agreement  
617 date.

618 (3) Each account agreement shall state clearly that there are no guarantees regarding  
619 moneys in the Utah Educational Savings Plan Trust as to the return of principal and that losses  
620 could occur.

621 (4) Each account agreement shall provide that:

622 (a) ~~no~~ a contributor to, or designated beneficiary under, an account agreement may  
623 not direct the investment of any contributions or earnings on contributions;

624 (b) ~~no~~ any part of the money in any account may not be used as security for a loan;  
625 and

626 (c) ~~no~~ an account owner may not borrow from the Utah Educational Savings Plan  
627 Trust.

628 (5) The execution of an account agreement by the trust may not guarantee in any way  
629 that higher education costs will be equal to projections and estimates provided by the Utah  
630 Educational Savings Plan Trust or that the beneficiary named in any participation agreement  
631 will:

632 (a) be admitted to an institution of higher education;

633 (b) if admitted, be determined a resident for tuition purposes by the institution of  
634 higher education, unless the account agreement is vested;

635 (c) be allowed to continue attendance at the institution of higher education following  
636 admission; or

637 (d) graduate from the institution of higher education.

638 (6) ~~Beneficiaries~~ A beneficiary may be changed as permitted by the rules and  
639 regulations of the board upon written request of the account owner prior to the date of  
640 admission of any beneficiary under an account agreement by an institution of higher education  
641 so long as the substitute beneficiary is eligible for participation.

642 (7) ~~Account agreements~~ An account agreement may be freely amended throughout  
643 ~~their terms~~ the term of the account agreement in order to enable ~~account owners~~ an account  
644 owner to increase or decrease the level of participation, change the designation of beneficiaries,  
645 and carry out similar matters as authorized by rule.

646 (8) Each account agreement shall provide that:

647 (a) the account agreement may be canceled upon the terms and conditions, and upon  
648 payment of the fees and costs set forth and contained in the board's rules and regulations; and

649 (b) the program administrator may amend the agreement unilaterally and retroactively,  
650 if necessary, to maintain the Utah Educational Savings Plan Trust as a qualified tuition  
651 program under Section 529, Internal Revenue Code.

652 Section 16. Section **59-7-101** is amended to read:

653 **59-7-101. Definitions.**

654 As used in this chapter:

655 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105  
656 and 59-7-106.

657 (2) (a) "Affiliated group" means one or more chains of corporations that are connected  
658 through stock ownership with a common parent corporation that meet the following  
659 requirements:

660 (i) at least 80% of the stock of each of the corporations in the group, excluding the  
661 common parent corporation, is owned by one or more of the other corporations in the group;  
662 and

663 (ii) the common parent directly owns at least 80% of the stock of at least one of the  
664 corporations in the group.

665 (b) "Affiliated group" does not include corporations that are qualified to do business  
666 but are not otherwise doing business in this state.

667 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which  
668 is limited and preferred as to dividends.

669 (3) "Apportionable income" means adjusted income less nonbusiness income net of  
670 related expenses, to the extent included in adjusted income.

671 (4) "Apportioned income" means apportionable income multiplied by the  
672 apportionment fraction as determined in Section 59-7-311.

673 (5) "Business income" is as defined in Section 59-7-302.

674 (6) (a) "Captive real estate investment trust" means a real estate investment trust if:

675 (i) the shares or beneficial interests of the real estate investment trust are not regularly  
676 traded on an established securities market; and

677 (ii) more than 50% of the voting power or value of the shares or beneficial interests of  
678 the real estate investment trust are directly, indirectly, or constructively:

679 (A) owned by a controlling entity of the real estate investment trust; or

680 (B) controlled by a controlling entity of the real estate investment trust.

681 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
682 commission may make rules defining "established securities market."

683 (7) (a) "Controlling entity of a captive real estate investment trust" means an entity  
684 that:

685 (i) is treated as an association taxable as a corporation under the Internal Revenue  
686 Code;

687 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue  
688 Code; and

689 (iii) directly, indirectly, or constructively holds more than 50% of:

690 (A) the voting power of a captive real estate investment trust; or

691 (B) the value of the shares or beneficial interests of a captive real estate investment  
692 trust.

693 (b) "Controlling entity of a captive real estate investment trust" does not include:

694 (i) a real estate investment trust, except for a captive real estate investment trust;

695 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal  
696 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real  
697 estate investment trust; or

698 (iii) a foreign real estate investment trust.

699 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
700 commission may make rules defining "established securities market."

701 ~~[(7)]~~ (8) (a) "Common ownership" means the direct or indirect control or ownership of  
702 more than 50% of the outstanding voting stock of:

703 (i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue  
704 Code, except that 50% shall be substituted for 80%;

705 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue  
706 Code, except that 50% shall be substituted for 80%; or

707 (iii) three or more corporations each of which is a member of a group of corporations

708 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

709 (A) a common parent corporation included in a group of corporations described in  
710 Subsection (2)(a)(i); and

711 (B) included in a group of corporations described in Subsection (2)(a)(ii).

712 (b) Ownership of outstanding voting stock shall be determined by Section 1563,  
713 Internal Revenue Code.

714 [~~6~~] 9 "Corporate return" or "return" includes a combined report.

715 [~~8~~] 10 "Corporation" includes:

716 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue  
717 Code; and

718 (b) other organizations that are taxed as corporations for federal income tax purposes  
719 under the Internal Revenue Code.

720 [~~9~~] 11 "Dividend" means any distribution, including money or other type of  
721 property, made by a corporation to its shareholders out of its earnings or profits accumulated  
722 after December 31, 1930.

723 [~~10~~] 12 (a) "Doing business" includes any transaction in the course of its business  
724 by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate  
725 business in this state.

726 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:

727 (i) the right to do business through incorporation or qualification;

728 (ii) the owning, renting, or leasing of real or personal property within this state; and

729 (iii) the participation in joint ventures, working and operating agreements, the  
730 performance of which takes place in this state.

731 [~~11~~] 13 "Domestic corporation" means a corporation that is incorporated or  
732 organized under the laws of this state.

733 [~~12~~] 14 (a) "Farmers' cooperative" means an association, corporation, or other  
734 organization that is:

735 (i) (A) an association, corporation, or other organization of:

736 (I) farmers; or

737 (II) fruit growers; or

738 (B) an association, corporation, or other organization that is similar to an association,

739 corporation, or organization described in Subsection [~~(12)~~] (14)(a)(i)(A); and

740 (ii) organized and operated on a cooperative basis to:

741 (A) (I) market the products of members of the cooperative or the products of other

742 producers; and

743 (II) return to the members of the cooperative or other producers the proceeds of sales

744 less necessary marketing expenses on the basis of the quantity of the products of a member or

745 producer or the value of the products of a member or producer; or

746 (B) (I) purchase supplies and equipment for the use of members of the cooperative or

747 other persons; and

748 (II) turn over the supplies and equipment described in Subsection [~~(12)~~]

749 (14)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or

750 other persons.

751 (b) (i) Subject to Subsection [~~(12)~~] (14)(b)(ii), for purposes of this Subsection [~~(12)~~]

752 (14), the commission by rule, made in accordance with Title 63, Chapter 46a, Utah

753 Administrative Rulemaking Act, shall define:

754 (A) the terms:

755 (I) "member"; and

756 (II) "producer"; and

757 (B) what constitutes an association, corporation, or other organization that is similar to

758 an association, corporation, or organization described in Subsection [~~(12)~~] (14)(a)(i)(A).

759 (ii) The rules made under this Subsection [~~(12)~~] (14)(b) shall be consistent with the

760 filing requirements under federal law for a farmers' cooperative.

761 [~~(13)~~] (15) "Foreign corporation" means a corporation that is not incorporated or

762 organized under the laws of this state.

763 [~~(14)~~] (16) (a) "Foreign operating company" means a corporation that:

764 (i) is incorporated in the United States; and

765 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is

766 conducted outside the United States.

767 (b) "Foreign operating company" does not include a corporation that qualifies for the

768 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

769 (17) (a) "Foreign real estate investment trust" means:

770 (i) a business entity organized outside the laws of the United States if:  
771 (A) at least 75% of the business entity's total asset value at the close of the business  
772 entity's taxable year is represented by:  
773 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;  
774 (II) cash or cash equivalents; or  
775 (III) one or more securities issued or guaranteed by the United States;  
776 (B) the business entity is:  
777 (I) not subject to income taxation:  
778 (Aa) on amounts distributed to the business entity's beneficial owners; and  
779 (Bb) in the jurisdiction in which the business entity is organized; or  
780 (II) exempt from income taxation on an entity level in the jurisdiction in which the  
781 business entity is organized;  
782 (C) the business entity distributes at least 85% of the business entity's taxable income,  
783 as computed in the jurisdiction in which the business entity is organized, to the holders of the  
784 business entity's:  
785 (I) shares or beneficial interests; and  
786 (II) on an annual basis;  
787 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively  
788 by a single person:  
789 (Aa) the voting power of the business entity; or  
790 (Bb) the value of the shares or beneficial interests of the business entity; or  
791 (II) the shares of the business entity are regularly traded on an established securities  
792 market; and  
793 (E) the business entity is organized in a country that has a tax treaty with the United  
794 States; or  
795 (ii) a listed Australian property trust.  
796 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
797 commission may make rules defining:  
798 (i) "cash or cash equivalents";  
799 (ii) "established securities market"; or  
800 (iii) "listed Australian property trust."

801            [(15)] (18) "Income" includes losses.

802            [(16)] (19) "Internal Revenue Code" means Title 26 of the United States Code as  
803 effective during the year in which Utah taxable income is determined.

804            [(17)] (20) "Nonbusiness income" is as defined in Section 59-7-302.

805            [(18)] (21) "Nonresident shareholder" means any shareholder of an S corporation who  
806 on the last day of the taxable year of the S corporation, is:

807            (a) an individual not domiciled in Utah; or

808            (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.

809            (22) "Real estate investment trust" is as defined in Section 856, Internal Revenue Code.

810            [(19)] (23) "Related expenses" means:

811            (a) expenses directly attributable to nonbusiness income; and

812            (b) the portion of interest or other expense indirectly attributable to both nonbusiness  
813 and business income which bears the same ratio to the aggregate amount of such interest or  
814 other expense, determined without regard to this Subsection [(19)] (23), as the average amount  
815 of the asset producing the nonbusiness income bears to the average amount of all assets of the  
816 taxpayer within the taxable year.

817            [(20)] (24) "Resident shareholder" means any shareholder of an S corporation who is  
818 not a nonresident shareholder.

819            [(22)] (25) "Safe harbor lease" means a lease that qualified as a safe harbor lease under  
820 Section 168, Internal Revenue Code.

821            [(21)] (26) "S corporation" means an S corporation as defined in Section 1361, Internal  
822 Revenue Code.

823            [(23)] (27) "State of the United States" includes any of the 50 states or the District of  
824 Columbia [~~and "United States" includes the 50 states and the District of Columbia~~].

825            [(24)] (28) (a) "Taxable year" means the calendar year or the fiscal year ending during  
826 such calendar year upon the basis of which the adjusted income is computed.

827            (b) In the case of a return made for a fractional part of a year under this chapter or  
828 under rules prescribed by the commission, "taxable year" includes the period for which such  
829 return is made.

830            [(25)] (29) "Taxpayer" means any corporation subject to the tax imposed by this  
831 chapter.

832           ~~[(26)]~~ (30) "Threshold level of business activity" means business activity in the United  
833 States equal to or greater than 20% of the corporation's total business activity as determined  
834 under Section 59-7-401.

835           ~~[(27)]~~ (31) "Unadjusted income" means federal taxable income as determined on a  
836 separate return basis before intercompany eliminations as determined by the Internal Revenue  
837 Code, before the net operating loss deduction and special deductions for dividends received.

838           ~~[(28)]~~ (32) (a) "Unitary group" means a group of corporations that:

839           (i) are related through common ownership; and

840           (ii) by a preponderance of the evidence as determined by a court of competent  
841 jurisdiction or the commission, are economically interdependent with one another as  
842 demonstrated by the following factors:

843           (A) centralized management;

844           (B) functional integration; and

845           (C) economies of scale.

846           **(b) "Unitary group" includes a captive real estate investment trust.**

847           ~~[(b)]~~ (c) "Unitary group" does not include an S ~~[corporations]~~ corporation.

848           **(33) "United States" includes the 50 states and the District of Columbia.**

849           ~~[(29)]~~ (34) "Utah net loss" means the current year Utah taxable income before Utah net  
850 loss deduction, if determined to be less than zero.

851           ~~[(30)]~~ (35) "Utah net loss deduction" means the amount of Utah net losses from other  
852 taxable years that may be carried back or carried forward to the current taxable year in  
853 accordance with Section 59-7-110.

854           ~~[(31)]~~ (36) (a) "Utah taxable income" means Utah taxable income before net loss  
855 deduction less Utah net loss deduction.

856           (b) "Utah taxable income" includes income from tangible or intangible property located  
857 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign  
858 commerce.

859           ~~[(32)]~~ (37) "Utah taxable income before net loss deduction" means apportioned income  
860 plus nonbusiness income allocable to Utah net of related expenses.

861           ~~[(33)]~~ (38) (a) "Water's edge combined report" means a report combining the income  
862 and activities of:

863 (i) all members of a unitary group that are:

864 (A) corporations organized or incorporated in the United States, including those  
865 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section  
866 936, Internal Revenue Code, in accordance with Subsection [~~(33)~~] (38)(b); and

867 (B) corporations organized or incorporated outside of the United States meeting the  
868 threshold level of business activity; and

869 (ii) an affiliated group electing to file a water's edge combined report under Subsection  
870 59-7-402(2).

871 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto  
872 Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a  
873 unitary group.

874 [~~(34)~~] (39) "Worldwide combined report" means the combination of the income and  
875 activities of all members of a unitary group irrespective of the country in which the  
876 corporations are incorporated or conduct business activity.

877 Section 17. Section **59-7-105** is amended to read:

878 **59-7-105. Additions to unadjusted income.**

879 In computing adjusted income the following amounts shall be added to unadjusted  
880 income:

881 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state  
882 of the United States, including any agency and instrumentality of a state of the United States;

883 (2) the amount of any deduction taken on a corporation's federal return for taxes paid  
884 by a corporation:

885 (a) to Utah for taxes imposed by this chapter; and

886 (b) to another state of the United States, a foreign country, a United States possession,  
887 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or  
888 exercising its corporate franchise, including income, franchise, corporate stock and business  
889 and occupation taxes;

890 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and  
891 (2)(a);

892 (4) capital losses that have been deducted on a Utah corporate return in previous years;

893 (5) any deduction on the federal return that has been previously deducted on the Utah

894 return;

895 (6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;

896 (7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated  
897 technological equipment;

898 (8) charitable contributions, to the extent deducted on the federal return when  
899 determining federal taxable income;

900 (9) the amount of gain or loss determined under Section 59-7-114 relating to a target  
901 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already  
902 been included in the unadjusted income of the target corporation;

903 (10) the amount of gain or loss determined under Section 59-7-115 relating to  
904 corporations treated for federal purposes as having disposed of its assets under Section 336(e),  
905 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted  
906 income of the target corporation;

907 (11) adjustments to gains, losses, depreciation expense, amortization expense, and  
908 similar items due to a difference between basis for federal purposes and basis as computed  
909 under Section 59-7-107; [~~and~~]

910 (12) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings  
911 Incentive Program, from the account of a corporation that is an account owner as defined in  
912 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount  
913 withdrawn from the account of the corporation that is the account owner:

914 (a) is not expended for higher education costs as defined in Section 53B-8a-102; and

915 (b) is subtracted by the corporation:

916 (i) that is the account owner; and

917 (ii) in accordance with Subsection 59-7-106(18)~~[-]~~; and

918 (13) the amount of the deduction for dividends paid, as defined in Section 561, Internal  
919 Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in  
920 computing the taxable income of a captive real estate investment trust, if that captive real estate  
921 investment trust is subject to federal income taxation.

922 Section 18. Section **59-7-106** is amended to read:

923 **59-7-106. Subtractions from unadjusted income.**

924 In computing adjusted income the following amounts shall be subtracted from

925 unadjusted income:

926 (1) the foreign dividend gross-up included in gross income for federal income tax  
927 purposes under Section 78, Internal Revenue Code;

928 (2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct  
929 the loss on the current Utah return. The deduction shall be made by claiming the deduction on  
930 the current Utah return which shall be filed by the due date of the return, including extensions.

931 For the purposes of this Subsection (2) all capital losses in a given year must be:

932 (a) deducted in the year incurred; or

933 (b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue  
934 Code;

935 (3) the decrease in salary expense deduction for federal income tax purposes due to  
936 claiming the federal jobs credit under Section 51, Internal Revenue Code;

937 (4) the decrease in qualified research and basic research expense deduction for federal  
938 income tax purposes due to claiming the federal research and development credit under Section  
939 41, Internal Revenue Code;

940 (5) the decrease in qualified clinical testing expense deduction for federal income tax  
941 purposes due to claiming the federal orphan drug credit under Section 28, Internal Revenue  
942 Code;

943 (6) any decrease in any expense deduction for federal income tax purposes due to  
944 claiming any other federal credit;

945 (7) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and  
946 (2)(b);

947 (8) any income on the federal corporate return that has been previously taxed by Utah;

948 (9) amounts included in federal taxable income that are due to refunds of taxes  
949 imposed for the privilege of doing business, or exercising a corporate franchise, including  
950 income, franchise, corporate stock and business and occupation taxes paid by the corporation to  
951 Utah, another state of the United States, a foreign country, a United States possession, or the  
952 Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income  
953 under Section 59-7-105;

954 (10) charitable contributions, to the extent allowed as a subtraction under Section  
955 59-7-109;

956 (11) (a) 50% of the dividends deemed received or received from subsidiaries which are  
957 members of the unitary group and are organized or incorporated outside of the United States  
958 unless such subsidiaries are included in a combined report under Section 59-7-402 or 59-7-403.  
959 In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the  
960 dividends deemed received or received, the expense directly attributable to those dividends.  
961 Interest expense attributable to excluded dividends shall be determined by multiplying interest  
962 expense by a fraction, the numerator of which is the taxpayer's average investment in such  
963 dividend paying subsidiaries, and the denominator of which is the taxpayer's average total  
964 investment in assets;

965 (b) in determining income apportionable to this state, a portion of the factors of a  
966 foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be  
967 included in the combined report factors. The portion to be included shall be determined by  
968 multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the  
969 numerator of which is the amount of the dividend paid by the foreign subsidiary which is  
970 included in adjusted income, and the denominator of which is the current year earnings and  
971 profits of the foreign subsidiary as determined under the Internal Revenue Code;

972 (12) (a) 50% of the adjusted income of a foreign operating company unless the  
973 taxpayer has elected to file a worldwide combined report as provided in Section 59-7-403. For  
974 purposes of this Subsection (12), when calculating the adjusted income of a foreign operating  
975 company, a foreign operating company may not deduct the subtractions allowable under this  
976 Subsection (12) and Subsection (11);

977 (b) in determining income apportionable to this state, the factors for a foreign operating  
978 company shall be included in the combined report factors in the same percentage its adjusted  
979 income is included in the combined adjusted income;

980 (13) the amount of gain or loss which is included in unadjusted income but not  
981 recognized for federal purposes on stock sold or exchanged by a member of a selling  
982 consolidated group as defined in Section 338, Internal Revenue Code, if an election has been  
983 made pursuant to Section 338(h)(10), Internal Revenue Code;

984 (14) the amount of gain or loss which is included in unadjusted income but not  
985 recognized for federal purposes on stock sold, exchanged, or distributed by a corporation  
986 pursuant to Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal

987 Revenue Code, has been made for federal purposes;

988 (15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and  
989 similar items due to a difference between basis for federal purposes and basis as computed  
990 under Section 59-7-107; and

991 (b) if there has been a reduction in federal basis for a federal tax credit where there is  
992 no corresponding Utah tax credit, the amount of the reduction in basis shall be allowed as an  
993 expense in the year of the federal credit;

994 (16) any interest expense not deducted on the federal corporate return under Section  
995 265(b) or 291(e), Internal Revenue Code;

996 (17) 100% of the dividends received from subsidiaries which are insurance companies  
997 exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"  
998 as defined by Subsection 59-7-101~~(7)~~(8); ~~and~~

999 (18) subject to Subsection 59-7-105(12), the amount of a qualified investment as  
1000 defined in Section 53B-8a-102 that:

1001 (a) a corporation that is an account owner as defined in Section 53B-8a-102 makes  
1002 during the taxable year;

1003 (b) the corporation described in Subsection (18)(a) does not deduct on a federal  
1004 corporation income tax return; and

1005 (c) does not exceed the maximum amount of the qualified investment that may be  
1006 subtracted from unadjusted income for a taxable year in accordance with Subsections  
1007 53B-8a-106(1)(d) and (f)~~[-]; and~~

1008 (19) for purposes of income included in a combined report under Part 4, Combined  
1009 Reporting, the entire amount of the dividends a member of a unitary group receives or is  
1010 considered to receive from a captive real estate investment trust.

1011 Section 19. Section **59-7-116.5** is amended to read:

1012 **59-7-116.5. Real estate investment trusts.**

1013 (1) A real estate investment trust~~[, as defined in Section 856, Internal Revenue Code,]~~  
1014 that is not a captive real estate investment trust shall be taxed on the same income taxed for  
1015 federal purposes under the Internal Revenue Code.

1016 (2) Any income taxable under this section shall be taxed at the same rate and in the  
1017 same manner provided for in this chapter.

1018 Section 20. Section **59-7-402** is amended to read:

1019 **59-7-402. Water's edge combined report.**

1020 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection  
1021 59-7-101[(33)](38)(a) is doing business in Utah, the unitary group shall file a water's edge  
1022 combined report.

1023 (2) (a) A group of corporations that are not otherwise a unitary group may elect to file a  
1024 water's edge combined report if each member of the group is:

1025 (i) doing business in Utah;

1026 (ii) part of the same affiliated group; and

1027 (iii) qualified, under Section 1501, Internal Revenue Code, to file a federal  
1028 consolidated return.

1029 (b) Each corporation within the affiliated group that is doing business in Utah must  
1030 consent to filing a combined report. If an affiliated group elects to file a combined report, each  
1031 corporation within the affiliated group that is doing business in Utah must file a combined  
1032 report.

1033 (c) Corporations that elect to file a water's edge combined report under this section may  
1034 not thereafter elect to file a separate return without the consent of the commission.

1035 Section 21. Section **59-7-614** is amended to read:

1036 **59-7-614. Renewable energy systems tax credit -- Definitions -- Limitations --**  
1037 **State tax credit in addition to allowable federal credits -- Certification -- Rulemaking**  
1038 **authority.**

1039 (1) As used in this section:

1040 (a) "Active solar system":

1041 (i) means a system of equipment capable of collecting and converting incident solar  
1042 radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy  
1043 by a separate apparatus to storage or to the point of use; and

1044 (ii) includes water heating, space heating or cooling, and electrical or mechanical  
1045 energy generation.

1046 (b) "Biomass system" means any system of apparatus and equipment for use in  
1047 converting material into biomass energy, as defined in Section 59-12-102, and transporting that  
1048 energy by separate apparatus to the point of use or storage.

1049 (c) "Business entity" means any sole proprietorship, estate, trust, partnership,  
1050 association, corporation, cooperative, or other entity under which business is conducted or  
1051 transacted.

1052 (d) "Commercial energy system" means any active solar, passive solar, geothermal  
1053 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or  
1054 biomass system used to supply energy to a commercial unit or as a commercial enterprise.

1055 (e) "Commercial enterprise" means a business entity whose purpose is to produce  
1056 electrical, mechanical, or thermal energy for sale from a commercial energy system.

1057 (f) (i) "Commercial unit" means any building or structure that a business entity uses to  
1058 transact its business.

1059 (ii) Notwithstanding Subsection (1)(f)(i):

1060 (A) in the case of an active solar system used for agricultural water pumping or a wind  
1061 system, each individual energy generating device shall be a commercial unit; and

1062 (B) if an energy system is the building or structure that a business entity uses to  
1063 transact its business, a commercial unit is the complete energy system itself.

1064 (g) "Direct-use geothermal system" means a system of apparatus and equipment  
1065 enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit,  
1066 that is contained in the earth to meet energy needs, including heating a building, an industrial  
1067 process, and aquaculture.

1068 (h) "Geothermal electricity" means energy contained in heat that continuously flows  
1069 outward from the earth that is used as a sole source of energy to produce electricity.

1070 (i) "Geothermal heat-pump system" means a system of apparatus and equipment  
1071 enabling the use of thermal properties contained in the earth at temperatures well below 100  
1072 degrees Fahrenheit to help meet heating and cooling needs of a structure.

1073 (j) "Hydroenergy system" means a system of apparatus and equipment capable of  
1074 intercepting and converting kinetic water energy into electrical or mechanical energy and  
1075 transferring this form of energy by separate apparatus to the point of use or storage.

1076 (k) "Individual taxpayer" means any person who is a taxpayer as defined in Section  
1077 59-10-103 and an individual as defined in Section 59-10-103.

1078 (l) "Passive solar system":

1079 (i) means a direct thermal system that utilizes the structure of a building and its

1080 operable components to provide for collection, storage, and distribution of heating or cooling  
1081 during the appropriate times of the year by utilizing the climate resources available at the site;  
1082 and

1083 (ii) includes those portions and components of a building that are expressly designed  
1084 and required for the collection, storage, and distribution of solar energy.

1085 (m) "Residential energy system" means any active solar, passive solar, biomass,  
1086 direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system used to  
1087 supply energy to or for any residential unit.

1088 (n) "Residential unit" means any house, condominium, apartment, or similar dwelling  
1089 unit that serves as a dwelling for a person, group of persons, or a family but does not include  
1090 property subject to a fee under:

1091 (i) Section 59-2-404;

1092 (ii) Section 59-2-405;

1093 (iii) Section 59-2-405.1;

1094 (iv) Section 59-2-405.2; or

1095 (v) Section 59-2-405.3.

1096 (o) "Utah Geological Survey" means the Utah Geological Survey established in Section  
1097 63-73-5.

1098 (p) "Wind system" means a system of apparatus and equipment capable of intercepting  
1099 and converting wind energy into mechanical or electrical energy and transferring these forms of  
1100 energy by a separate apparatus to the point of use, sale, or storage.

1101 (2) (a) (i) For taxable years beginning on or after January 1, 2007, a business entity that  
1102 purchases and completes or participates in the financing of a residential energy system to  
1103 supply all or part of the energy required for a residential unit owned or used by the business  
1104 entity and situated in Utah is entitled to a nonrefundable tax credit as provided in this  
1105 Subsection (2)(a).

1106 (ii) (A) A business entity is entitled to a tax credit equal to 25% of the reasonable costs  
1107 of each residential energy system installed with respect to each residential unit it owns or uses,  
1108 including installation costs, against any tax due under this chapter for the taxable year in which  
1109 the energy system is completed and placed in service.

1110 (B) The total amount of each credit under this Subsection (2)(a) may not exceed \$2,000

1111 per residential unit.

1112 (C) The credit under this Subsection (2)(a) is allowed for any residential energy system  
1113 completed and placed in service on or after January 1, 2007.

1114 (iii) If a business entity sells a residential unit to an individual taxpayer before making  
1115 a claim for the tax credit under this Subsection (2)(a), the business entity may:

1116 (A) assign its right to this tax credit to the individual taxpayer; and

1117 (B) if the business entity assigns its right to the tax credit to an individual taxpayer  
1118 under Subsection (2)(a)(iii)(A), the individual taxpayer may claim the tax credit as if the  
1119 individual taxpayer had completed or participated in the costs of the residential energy system  
1120 under Section 59-10-1014.

1121 (b) (i) For taxable years beginning on or after January 1, 2007, a business entity that  
1122 purchases or participates in the financing of a commercial energy system situated in Utah is  
1123 entitled to a refundable tax credit as provided in this Subsection (2)(b) if the commercial  
1124 energy system does not use wind, geothermal electricity, or biomass equipment capable of  
1125 producing a total of 660 or more kilowatts of electricity, and:

1126 (A) the commercial energy system supplies all or part of the energy required by  
1127 commercial units owned or used by the business entity; or

1128 (B) the business entity sells all or part of the energy produced by the commercial  
1129 energy system as a commercial enterprise.

1130 (ii) (A) A business entity is entitled to a tax credit of up to 10% of the reasonable costs  
1131 of any commercial energy system installed, including installation costs, against any tax due  
1132 under this chapter for the taxable year in which the commercial energy system is completed and  
1133 placed in service.

1134 (B) Notwithstanding Subsection (2)(b)(ii)(A), the total amount of the credit under this  
1135 Subsection (2)(b) may not exceed \$50,000 per commercial unit.

1136 (C) The credit under this Subsection (2)(b) is allowed for any commercial energy  
1137 system completed and placed in service on or after January 1, 2007.

1138 (iii) A business entity that leases a commercial energy system installed on a  
1139 commercial unit is eligible for the tax credit under this Subsection (2)(b) if the lessee can  
1140 confirm that the lessor irrevocably elects not to claim the credit.

1141 (iv) Only the principal recovery portion of the lease payments, which is the cost

1142 incurred by a business entity in acquiring a commercial energy system, excluding interest  
1143 charges and maintenance expenses, is eligible for the tax credit under this Subsection (2)(b).

1144 (v) A business entity that leases a commercial energy system is eligible to use the tax  
1145 credit under this Subsection (2)(b) for a period no greater than seven years from the initiation  
1146 of the lease.

1147 (vi) A tax credit allowed by this Subsection (2)(b) may not be carried forward or  
1148 carried back.

1149 (c) (i) For taxable years beginning on or after January 1, 2007, a business entity that  
1150 owns a commercial energy system situated in Utah using wind, geothermal electricity, or  
1151 biomass equipment capable of producing a total of 660 or more kilowatts of electricity is  
1152 entitled to a refundable tax credit as provided in this Subsection (2)(c) if:

1153 (A) the commercial energy system supplies all or part of the energy required by  
1154 commercial units owned or used by the business entity; or

1155 (B) the business entity sells all or part of the energy produced by the commercial  
1156 energy system as a commercial enterprise.

1157 (ii) (A) A business entity is entitled to a tax credit under this section equal to the  
1158 product of:

1159 (I) 0.35 cents; and

1160 (II) the kilowatt hours of electricity produced and either used or sold during the taxable  
1161 year.

1162 (B) (I) The credit calculated under Subsection (2)(c)(ii)(A) may be claimed for  
1163 production occurring during a period of 48 months beginning with the month in which the  
1164 commercial energy system is placed in commercial service.

1165 (II) The credit allowed by this Subsection (2)(c) for each year may not be carried  
1166 forward or carried back.

1167 (C) The credit under this Subsection (2)(c) is allowed for any commercial energy  
1168 system completed and placed in service on or after January 1, 2007.

1169 (iii) A business entity that leases a commercial energy system installed on a  
1170 commercial unit is eligible for the tax credit under this Subsection (2)(c) if the lessee can  
1171 confirm that the lessor irrevocably elects not to claim the credit.

1172 (d) (i) A tax credit under Subsection (2)(a) or (b) may be claimed for the taxable year

1173 in which the energy system is completed and placed in service.

1174 (ii) Additional energy systems or parts of energy systems may be claimed for  
1175 subsequent years.

1176 (iii) If the amount of a tax credit under Subsection (2)(a) exceeds a business entity's tax  
1177 liability under this chapter for a taxable year, the amount of the credit exceeding the liability  
1178 may be carried forward for a period which does not exceed the next four taxable years.

1179 (3) (a) ~~[(The)]~~ Except as provided in Subsection (3)(b), the tax credits provided for  
1180 under Subsection (2) are in addition to any tax credits provided under the laws or rules and  
1181 regulations of the United States.

1182 (b) A purchaser of one or more solar units that claims a tax credit under Section  
1183 59-7-614.2 for the purchase of the one or more solar units may not claim a tax credit under this  
1184 section for that purchase.

1185 ~~[(b)]~~ (c) (i) The Utah Geological Survey may set standards for residential and  
1186 commercial energy systems claiming a credit under Subsections (2)(a) and (b) that cover the  
1187 safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the  
1188 systems eligible for the tax credit use the state's renewable and nonrenewable energy resources  
1189 in an appropriate and economic manner.

1190 (ii) The Utah Geological Survey may set standards for residential and commercial  
1191 energy systems that establish the reasonable costs of an energy system, as used in Subsections  
1192 (2)(a)(ii)(A) and (2)(b)(ii)(A), as an amount per unit of energy production.

1193 (iii) A tax credit may not be taken under Subsection (2) until the Utah Geological  
1194 Survey has certified that the energy system has been completely installed and is a viable system  
1195 for saving or production of energy from renewable resources.

1196 ~~[(c)]~~ (d) The Utah Geological Survey and the commission may make rules in  
1197 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are  
1198 necessary to implement this section.

1199 (4) (a) On or before October 1, 2012, and every five years thereafter, the Utah Tax  
1200 Review Commission shall review each tax credit provided by this section and make  
1201 recommendations to the Revenue and Taxation Interim Committee concerning whether the  
1202 credit should be continued, modified, or repealed.

1203 (b) The Utah Tax Review Commission's report under Subsection (4)(a) shall include

1204 information concerning the cost of the credit, the purpose and effectiveness of the credit, and  
1205 the state's benefit from the credit.

1206 Section 22. Section **59-7-614.2** is enacted to read:

1207 **59-7-614.2. Nonrefundable tax credit for qualifying solar projects.**

1208 (1) As used in this section:

1209 (a) "Active solar system" is as defined in Section 59-7-614.

1210 (b) "Purchaser" means a taxpayer that purchases one or more solar units from a  
1211 qualifying political subdivision.

1212 (c) "Qualifying political subdivision" means:

1213 (i) a city or town in this state;

1214 (ii) an interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act;

1215 or

1216 (iii) a special service district created under Title 17A, Chapter 2, Part 13, Utah Special  
1217 Service District Act.

1218 (d) "Qualifying solar project" means the portion of an active solar system:

1219 (i) that a qualifying political subdivision:

1220 (A) constructs;

1221 (B) controls; or

1222 (C) owns;

1223 (ii) with respect to which the qualifying political subdivision described in Subsection

1224 (1)(c)(i) sells one or more solar units; and

1225 (iii) that generates electrical output that is furnished:

1226 (A) to one or more residential units; or

1227 (B) for the benefit of one or more residential units.

1228 (e) "Residential unit" is as defined in Section 59-7-614.

1229 (f) "Solar unit" means a portion of the electrical output:

1230 (i) of a qualifying solar project;

1231 (ii) that a qualifying political subdivision sells to a purchaser; and

1232 (iii) the purchase of which requires that the purchaser agree to bear a proportionate  
1233 share of the expense of the qualifying solar project:

1234 (A) in accordance with a written agreement between the purchaser and the qualifying

1235 political subdivision;  
1236 (B) in exchange for a credit on the purchaser's electrical bill; and  
1237 (C) as determined by a formula established by the qualifying political subdivision.  
1238 (2) Subject to Subsection (3), for taxable years beginning on or after January 1, 2008, a  
1239 purchaser may claim a nonrefundable tax credit equal to the product of:  
1240 (a) the amount the purchaser pays to purchase one or more solar units during the  
1241 taxable year; and  
1242 (b) 25%.  
1243 (3) For a taxable year, a tax credit under this section may not exceed \$2,000 on a  
1244 return.  
1245 (4) A purchaser may carry forward a tax credit under this section for a period that does  
1246 not exceed the next four taxable years if:  
1247 (a) the purchaser is allowed to claim a tax credit under this section for a taxable year;  
1248 and  
1249 (b) the amount of the tax credit exceeds the purchaser's tax liability under this chapter  
1250 for that taxable year.  
1251 (5) Subject to Section 59-7-614, a tax credit under this section is in addition to any  
1252 other tax credit allowed by this chapter.  
1253 (6) (a) On or before October 1, 2012, and every five years after October 1, 2012, the  
1254 Utah Tax Review Commission shall review the tax credit allowed by this section and make  
1255 recommendations to the Revenue and Taxation Interim Committee concerning whether the tax  
1256 credit should be continued, modified, or repealed.  
1257 (b) The Utah Tax Review Commission's report under Subsection (6)(a) shall include  
1258 information concerning the cost of the tax credit, the purpose and effectiveness of the tax  
1259 credit, and the state's benefit from the tax credit.  
1260 Section 23. Section **59-10-103** is amended to read:  
1261 **59-10-103. Definitions.**  
1262 (1) As used in this chapter:  
1263 (a) "Adjusted gross income":  
1264 (i) for a resident or nonresident individual, is as defined in Section 62, Internal  
1265 Revenue Code; or

1266 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),  
1267 Internal Revenue Code.  
1268 [~~(b) "Adoption expenses" means:~~]  
1269 [~~(i) any actual medical and hospital expenses of the mother of the adopted child which~~  
1270 ~~are incident to the child's birth;~~]  
1271 [~~(ii) any welfare agency fees or costs;~~]  
1272 [~~(iii) any child placement service fees or costs;~~]  
1273 [~~(iv) any legal fees or costs; or~~]  
1274 [~~(v) any other fees or costs relating to an adoption.~~]  
1275 [~~(c) "Adult with a disability" means an individual who:~~]  
1276 [~~(i) is 18 years of age or older;~~]  
1277 [~~(ii) is eligible for services under Title 62A, Chapter 5, Services for People with~~  
1278 ~~Disabilities; and~~]  
1279 [~~(iii) is not enrolled in:~~]  
1280 [~~(A) an education program for students with disabilities that is authorized under~~  
1281 ~~Section 53A-15-301; or~~]  
1282 [~~(B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.~~]  
1283 [~~(d) (i) For purposes of Subsection 59-10-114(2)(1), "capital gain transaction" means a~~  
1284 ~~transaction that results in a:~~]  
1285 [~~(A) short-term capital gain; or~~]  
1286 [~~(B) long-term capital gain.~~]  
1287 [~~(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~  
1288 ~~the commission may by rule define the term "transaction."~~]  
1289 [~~(e) "Commercial domicile" means the principal place from which the trade or business~~  
1290 ~~of a Utah small business corporation is directed or managed.~~]  
1291 [~~(f)~~ (b) "Corporation" includes:  
1292 (i) [~~associations~~] an association;  
1293 (ii) a joint stock [~~companies~~] company; and  
1294 (iii) an insurance [~~companies~~] company.  
1295 [~~(g) "Dependent child with a disability" means an individual 21 years of age or younger~~  
1296 ~~who:~~]

1297           ~~[(i) (A) is diagnosed by a school district representative under rules adopted by the State~~  
1298 ~~Board of Education as having a disability classified as:]~~  
1299           ~~[(F) autism;]~~  
1300           ~~[(H) deafness;]~~  
1301           ~~[(III) preschool developmental delay;]~~  
1302           ~~[(IV) dual sensory impairment;]~~  
1303           ~~[(V) hearing impairment;]~~  
1304           ~~[(VI) intellectual disability;]~~  
1305           ~~[(VII) multidisability;]~~  
1306           ~~[(VIII) orthopedic impairment;]~~  
1307           ~~[(IX) other health impairment;]~~  
1308           ~~[(X) traumatic brain injury; or]~~  
1309           ~~[(XI) visual impairment;]~~  
1310           ~~[(B) is not receiving residential services from:]~~  
1311           ~~[(F) the Division of Services for People with Disabilities created under Section~~  
1312 ~~62A-5-102; or]~~  
1313           ~~[(H) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;~~  
1314 ~~and]~~  
1315           ~~[(C) is enrolled in:]~~  
1316           ~~[(F) an education program for students with disabilities that is authorized under Section~~  
1317 ~~53A-15-301; or]~~  
1318           ~~[(H) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;~~  
1319 ~~or]~~  
1320           ~~[(ii) is identified under guidelines of the Department of Health as qualified for:]~~  
1321           ~~[(A) Early Intervention; or]~~  
1322           ~~[(B) Infant Development Services.]~~  
1323           ~~[(h) (c) "Distributable net income" is as defined in Section 643, Internal Revenue~~  
1324 ~~Code.~~  
1325           ~~[(i) (d) "Employee" is as defined in Section 59-10-401.~~  
1326           ~~[(j) (e) "Employer" is as defined in Section 59-10-401.~~  
1327           ~~[(k) (f) "Federal taxable income":~~

1328 (i) for a resident or nonresident individual, means taxable income as defined by Section  
1329 63, Internal Revenue Code; or

1330 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and  
1331 (b), Internal Revenue Code.

1332 ~~[(h)]~~ (g) "Fiduciary" means:

1333 (i) a guardian;

1334 (ii) a trustee;

1335 (iii) an executor;

1336 (iv) an administrator;

1337 (v) a receiver;

1338 (vi) a conservator; or

1339 (vii) any person acting in any fiduciary capacity for any individual.

1340 (h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

1341 ~~[(m)]~~ (i) "Homesteaded land diminished from the Uintah and Ouray Reservation"

1342 means the homesteaded land that was held to have been diminished from the Uintah and Ouray  
1343 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

1344 ~~[(n)]~~ (j) "Individual" means a natural person and includes aliens and minors.

1345 ~~[(o)]~~ (k) "Irrevocable trust" means a trust in which the settlor may not revoke or  
1346 terminate all or part of the trust without the consent of a person who has a substantial beneficial  
1347 interest in the trust and the interest would be adversely affected by the exercise of the settlor's  
1348 power to revoke or terminate all or part of the trust.

1349 ~~[(p) For purposes of Subsection 59-10-114(2)(1), "long-term capital gain" is as defined~~  
1350 ~~in Section 1222, Internal Revenue Code.]~~

1351 (l) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.

1352 ~~[(q)]~~ (m) "Nonresident individual" means an individual who is not a resident of this  
1353 state.

1354 ~~[(r)]~~ (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not  
1355 a resident estate or trust.

1356 ~~[(s)]~~ (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other  
1357 unincorporated organization:

1358 (A) through or by means of which any business, financial operation, or venture is

1359 carried on; and  
1360 (B) which is not, within the meaning of this chapter:  
1361 (I) a trust;  
1362 (II) an estate; or  
1363 (III) a corporation.  
1364 (ii) "Partnership" does not include any organization not included under the definition of  
1365 "partnership" in Section 761, Internal Revenue Code.  
1366 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or  
1367 organization described in Subsection (1)(~~ts~~)(o)(i).  
1368 [~~(t) "Qualifying military servicemember" means a member of:~~  
1369 [~~(i) The Utah Army National Guard;~~  
1370 [~~(ii) The Utah Air National Guard; or~~  
1371 [~~(iii) the following if the member is assigned to a unit that is located in the state:]~~  
1372 [~~(A) The Army Reserve;~~  
1373 [~~(B) The Naval Reserve;~~  
1374 [~~(C) The Air Force Reserve;~~  
1375 [~~(D) The Marine Corps Reserve; or~~  
1376 [~~(E) The Coast Guard Reserve.~~  
1377 [~~(u) "Qualifying stock" means stock that is:~~  
1378 [~~(i) (A) common; or~~  
1379 [~~(B) preferred;~~  
1380 [~~(ii) as defined by the commission by rule, originally issued to:]~~  
1381 [~~(A) a resident or nonresident individual; or~~  
1382 [~~(B) a partnership if the resident or nonresident individual making a subtraction from~~  
1383 ~~federal taxable income in accordance with Subsection 59-10-114(2)(t):]~~  
1384 [~~(f) was a partner when the stock was issued; and]~~  
1385 [~~(H) remains a partner until the last day of the taxable year for which the resident or~~  
1386 ~~nonresident individual makes the subtraction from federal taxable income in accordance with~~  
1387 ~~Subsection 59-10-114(2)(t); and]~~  
1388 [~~(iii) issued:~~  
1389 [~~(A) by a Utah small business corporation;~~

- 1390 ~~[(B) on or after January 1, 2003; and]~~  
1391 ~~[(C) for:]~~  
1392 ~~[(F) money; or]~~  
1393 ~~[(H) other property, except for stock or securities:]~~  
1394 (p) "Qualified nongrantor charitable lead trust" means a trust:  
1395 (i) that is irrevocable;  
1396 (ii) that has a trust term measured by:  
1397 (A) a fixed term of years; or  
1398 (B) the life of a person living on the day on which the trust is created;  
1399 (iii) under which:  
1400 (A) a portion of the value of the trust assets is distributed during the trust term:  
1401 (I) to an organization described in Section 170(c), Internal Revenue Code; and  
1402 (II) as a:  
1403 (Aa) guaranteed annuity interest; or  
1404 (Bb) unitrust interest; and  
1405 (B) assets remaining in the trust at the termination of the trust term are distributed to a  
1406 beneficiary:  
1407 (I) designated in the trust; and  
1408 (II) that is not an organization described in Section 170(c), Internal Revenue Code;  
1409 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue  
1410 Code; and  
1411 (v) under which the grantor of the trust is not treated as the owner of any portion of the  
1412 trust for federal income tax purposes.  
1413 ~~[(v)]~~ (q) (i) "Resident individual" means:  
1414 (A) an individual who is domiciled in this state for any period of time during the  
1415 taxable year, but only for the duration of the period during which the individual is domiciled in  
1416 this state; or  
1417 (B) an individual who is not domiciled in this state but:  
1418 (I) maintains a permanent place of abode in this state; and  
1419 (II) spends in the aggregate 183 or more days of the taxable year in this state.  
1420 (ii) For purposes of Subsection (1)~~[(v)]~~ (q)(i)(B), a fraction of a calendar day shall be

1421 counted as a whole day.

1422 ~~[(w)]~~ (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.

1423 ~~[(x) For purposes of Subsection 59-10-114(2)(1), "short-term capital gain" is as defined~~  
1424 ~~in Section 1222, Internal Revenue Code.]~~

1425 (s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.

1426 (t) "State income tax percentage for a nonresident estate or trust" means a percentage  
1427 equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the  
1428 nonresident estate's or trust's total adjusted gross income for that taxable year after making the  
1429 adjustments required by:

1430 (i) Section 59-10-202;

1431 (ii) Section 59-10-207;

1432 (iii) Section 59-10-209.1; or

1433 (iv) Section 59-10-210;

1434 (u) "State income tax percentage for a nonresident individual" means a percentage  
1435 equal to a nonresident individual's state taxable income for the taxable year divided by the  
1436 difference between:

1437 (i) the nonresident individual's total adjusted gross income for that taxable year, after  
1438 making the:

1439 (A) additions and subtractions required by Section 59-10-114; and

1440 (B) adjustments required by Section 59-10-115; and

1441 (ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember,  
1442 the compensation the servicemember receives for military service if the servicemember is  
1443 serving in compliance with military orders.

1444 (v) "State income tax percentage for a part-year resident individual" means, for a  
1445 taxable year, a fraction:

1446 (i) the numerator of which is the sum of:

1447 (A) subject to Subsections 59-10-1404(3) and (4), for the time period during the  
1448 taxable year that the part-year resident individual is a resident, the part-year resident  
1449 individual's total adjusted gross income for that time period, after making the:

1450 (I) additions and subtractions required by Section 59-10-114; and

1451 (II) adjustments required by Section 59-10-115; and

1452 (B) for the time period during the taxable year that the part-year resident individual is a  
1453 nonresident, an amount calculated by:

1454 (I) determining the part-year resident individual's adjusted gross income for that time  
1455 period, after making the:

1456 (Aa) additions and subtractions required by Section 59-10-114; and

1457 (Bb) adjustments required by Section 59-10-115; and

1458 (II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I)  
1459 that is derived from Utah sources in accordance with Section 59-10-117; and

1460 (ii) the denominator of which is the difference between:

1461 (A) the part-year resident individual's total adjusted gross income for that taxable year,  
1462 after making the:

1463 (I) additions and subtractions required by Section 59-10-114; and

1464 (II) adjustments required by Section 59-10-115; and

1465 (B) if the part-year resident individual is a servicemember, any compensation the  
1466 servicemember receives for military service during the portion of the taxable year that the  
1467 servicemember is a nonresident if the servicemember is serving in compliance with military  
1468 orders.

1469 ~~[(y)]~~ (w) "Taxable income" or "state taxable income":

1470 (i) subject to Subsection ~~[59-10-302(2)]~~ 59-10-1404(3), for a resident individual ~~[other~~  
1471 ~~than a resident individual described in Subsection (1)(y)(iii)]~~, means the resident individual's  
1472 ~~[federal taxable]~~ adjusted gross income after making the:

1473 (A) additions and subtractions required by Section 59-10-114; and

1474 (B) adjustments required by Section 59-10-115;

1475 (ii) for a nonresident individual ~~[other than a nonresident individual described in~~  
1476 ~~Subsection (1)(y)(iii), is as defined in Section 59-10-116;]~~, is an amount calculated by:

1477 (A) determining the nonresident individual's adjusted gross income for the taxable  
1478 year, after making the:

1479 (I) additions and subtractions required by Section 59-10-114; and

1480 (II) adjustments required by Section 59-10-115; and

1481 (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A)  
1482 that is derived from Utah sources in accordance with Section 59-10-117;

1483 ~~[(iii) for a resident or nonresident individual that collects and pays a tax described in~~  
 1484 ~~Part 12, Single Rate Individual Income Tax Act, is as defined in Section 59-10-1202;]~~

1485 ~~[(iv)] (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and~~  
 1486 ~~[(v)] (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.~~

1487 ~~[(z)] (x) "Taxpayer" means any individual, estate, [or] trust, or beneficiary of an estate~~  
 1488 ~~or trust, [whose income is] that has income subject in whole or part to the tax imposed by this~~  
 1489 ~~chapter.~~

1490 (y) "Trust term" means a time period:

1491 (i) beginning on the day on which a qualified nongrantor charitable lead trust is  
 1492 created; and

1493 (ii) ending on the day on which the qualified nongrantor charitable lead trust described  
 1494 in Subsection (1)(y)(i) terminates.

1495 ~~[(aa)] (z) "Uintah and Ouray Reservation" means the lands recognized as being~~  
 1496 ~~included within the Uintah and Ouray Reservation in:~~

1497 (i) Hagen v. Utah, 510 U.S. 399 (1994); and

1498 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

1499 ~~[(bb) (i) "Utah small business corporation" means a corporation that:]~~

1500 ~~[(A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue~~  
 1501 ~~Code;]~~

1502 ~~[(B) except as provided in Subsection (1)(bb)(i)(B), meets the requirements of Section~~  
 1503 ~~1244(c)(1)(C), Internal Revenue Code; and]~~

1504 ~~[(C) has its commercial domicile in this state.]~~

1505 ~~[(ii) Notwithstanding Subsection (1)(bb)(i)(B), the time period described in Section~~  
 1506 ~~1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a~~  
 1507 ~~corporation's aggregate gross receipts shall end on the last day of the taxable year for which the~~  
 1508 ~~resident or nonresident individual makes a subtraction from federal taxable income in~~  
 1509 ~~accordance with Subsection 59-10-114(2)(1).]~~

1510 (aa) "Unadjusted income" means an amount equal to the difference between:

1511 (i) the total income required to be reported by a resident or nonresident estate or trust  
 1512 on the resident or nonresident estate's or trust's federal income tax return for estates and trusts  
 1513 for the taxable year; and

1514 (ii) the sum of the following:

1515 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:

1516 (I) for administering the resident or nonresident estate or trust; and

1517 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or  
1518 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable  
1519 year;

1520 (B) the income distribution deduction that a resident or nonresident estate or trust  
1521 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or  
1522 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable  
1523 year;

1524 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for  
1525 estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as  
1526 allowed on the resident or nonresident estate's or trust's federal income tax return for estates  
1527 and trusts for the taxable year; and

1528 (D) the amount that a resident or nonresident estate or trust deducts as a personal  
1529 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or  
1530 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable  
1531 year.

1532 (bb) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

1533 (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute  
1534 Indian Tribe of the Uintah and Ouray Reservation.

1535 (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

1536 (ee) "Wages" is as defined in Section 59-10-401.

1537 (2) (a) Any term used in this chapter has the same meaning as when used in  
1538 comparable context in the laws of the United States relating to federal income taxes unless a  
1539 different meaning is clearly required.

1540 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall  
1541 mean the Internal Revenue Code or other provisions of the laws of the United States relating to  
1542 federal income taxes that are in effect for the taxable year.

1543 (c) Any reference to a specific section of the Internal Revenue Code or other provision  
1544 of the laws of the United States relating to federal income taxes shall include any

1545 corresponding or comparable provisions of the Internal Revenue Code as [hereafter] amended,  
1546 redesignated, or reenacted.

1547 Section 24. Section **59-10-104** is amended to read:

1548 **59-10-104. Tax basis -- Tax rate -- Exemption.**

1549 (1) [~~Except as provided in Subsection (5) or Part 12, Single Rate Individual Income~~  
1550 ~~Tax Act, for] For taxable years beginning on or after January 1, [2006] 2008, [~~but beginning on~~  
1551 ~~or before December 31, 2007,~~] a tax is imposed on the state taxable income of [every] a  
1552 resident individual as provided in this section.~~

1553 [~~(2) For an individual, other than a husband and wife or head of household required to~~  
1554 ~~use the tax table under Subsection (3), the tax under this section is imposed in accordance with~~  
1555 ~~the following income brackets:]~~

|      |   |                  |   |
|------|---|------------------|---|
| 1556 | [ <del>If the state taxable income is:</del>    | <del>_____</del> | <del>The tax is:]</del>                       |
| 1557 | [ <del>Less than or equal to \$1,000</del>      | <del>_____</del> | <del>2.3% of the state taxable income]</del>  |
| 1558 | [ <del>Greater than \$1,000 but less than</del> | <del>_____</del> | <del>\$23, plus 3.3% of state taxable</del>   |
| 1559 | <del>[or equal to \$2,000</del>                 | <del>_____</del> | <del>income greater than \$1,000]</del>       |
| 1560 | [ <del>Greater than \$2,000 but less than</del> | <del>_____</del> | <del>\$56, plus 4.2% of state taxable</del>   |
| 1561 | <del>[or equal to \$3,000</del>                 | <del>_____</del> | <del>income greater than \$2,000]</del>       |
| 1562 | [ <del>Greater than \$3,000 but less than</del> | <del>_____</del> | <del>\$98, plus 5.2% of state taxable</del>   |
| 1563 | <del>[or equal to \$4,000</del>                 | <del>_____</del> | <del>income greater than \$3,000]</del>       |
| 1564 | [ <del>Greater than \$4,000 but less than</del> | <del>_____</del> | <del>\$150, plus 6% of state taxable</del>    |
| 1565 | <del>[or equal to \$5,500</del>                 | <del>_____</del> | <del>income greater than \$4,000]</del>       |
| 1566 | [ <del>Greater than \$5,500</del>               | <del>_____</del> | <del>\$240, plus 6.98% of state taxable</del> |
| 1567 |   |                  | <del>[income greater than \$5,500]</del>      |

1568 [(3) For a husband and wife filing a single return jointly, or a head of household as  
1569 defined in Section 2(b), Internal Revenue Code, filing a single return, the tax under this section  
1570 is imposed in accordance with the following income brackets:]

|      |   |                  |   |
|------|---|------------------|---|
| 1571 | [ <del>If the state taxable income is:</del>    | <del>_____</del> | <del>The tax is:]</del>                       |
| 1572 | [ <del>Less than or equal to \$2,000</del>      | <del>_____</del> | <del>2.3% of the state taxable income]</del>  |
| 1573 | [ <del>Greater than \$2,000 but less than</del> | <del>_____</del> | <del>\$46, plus 3.3% of state taxable]</del>  |
| 1574 | <del>[or equal to \$4,000</del>                 | <del>_____</del> | <del>income greater than \$2,000]</del>       |
| 1575 | [ <del>Greater than \$4,000 but less than</del> | <del>_____</del> | <del>\$112, plus 4.2% of state taxable]</del> |

1576 [or equal to \$6,000 income greater than \$4,000]  
1577 [Greater than \$6,000 but less than \$196, plus 5.2% of state taxable]  
1578 [or equal to \$8,000 income greater than \$6,000]  
1579 [Greater than \$8,000 but less than \$300, plus 6% of state taxable]  
1580 [or equal to \$11,000 income greater than \$8,000]  
1581 [Greater than \$11,000 \$480, plus 6.98% of state taxable]  
1582 [income greater than \$11,000]  
1583 [(4)(a) For taxable years beginning on or after January 1, 2009, the commission shall:]  
1584 [(i) make the following adjustments to the income brackets under Subsection (2):]  
1585 [(A) increase or decrease the income brackets under Subsection (2) by a percentage  
1586 equal to the percentage difference between the consumer price index for the preceding calendar  
1587 year and the consumer price index for the calendar year 2007; and]  
1588 [(B) after making an increase or decrease under Subsection (4)(a)(i)(A), round the  
1589 income brackets under Subsection (2) to the nearest whole dollar;]  
1590 [(ii) after making the adjustments described in Subsection (4)(a)(i) to the income  
1591 brackets under Subsection (2), adjust the income brackets under Subsection (3) so that for each  
1592 income bracket under Subsection (2) there is a corresponding income bracket under Subsection  
1593 (3) that is equal to the product of:]  
1594 [(A) each income bracket under Subsection (2); and]  
1595 [(B) two; and]  
1596 [(iii) to the extent necessary to reflect an adjustment under Subsection (4)(a)(i) or (ii):]  
1597 [(A) increase or decrease the amount of tax under Subsection (2) or (3) prior to adding  
1598 in the portion of the tax calculated as a percentage of state taxable income; and]  
1599 [(B) after making an increase or decrease under Subsection (4)(a)(iii)(A), round the  
1600 amount of tax under Subsection (2) or (3) to the nearest whole dollar.];  
1601 [(b) The commission may not increase or decrease the tax rate percentages provided in  
1602 Subsection (2) or (3).]  
1603 [(c) For purposes of Subsection (4)(a)(i), the commission shall calculate the consumer  
1604 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.];  
1605 (2) For purposes of Subsection (1), for a taxable year, the tax is an amount equal to the  
1606 product of:

1607 (a) the resident individual's state taxable income for that taxable year; and

1608 (b) 5%.

1609 [~~(5)~~] (3) This section does not apply to a resident individual exempt from taxation  
1610 under Section 59-10-104.1.

1611 Section 25. Section **59-10-104.1** is amended to read:

1612 **59-10-104.1. Exemption from taxation.**

1613 (1) For purposes of this section:

1614 (a) "Personal exemptions" means the total exemption amount an individual is allowed  
1615 to claim for the taxable year under Section 151, Internal Revenue Code, for:

1616 (i) the individual;

1617 (ii) the individual's spouse; and

1618 (iii) the individual's dependents.

1619 (b) "Standard deduction":

1620 (i) [~~except as provided in Subsection (1)(b)(ii);~~] means the standard deduction an  
1621 individual is allowed to claim for the taxable year under Section 63, Internal Revenue Code;  
1622 and

1623 (ii) notwithstanding Subsection (1)(b)(i), does not include an additional amount  
1624 allowed under Section 63(f), Internal Revenue Code, for an individual or an individual's spouse  
1625 who is:

1626 (A) blind; or

1627 (B) 65 years of age or older.

1628 (2) For taxable years beginning on or after January 1, 2002, an individual is exempt  
1629 from a tax imposed by Section 59-10-104 or 59-10-116 [~~or described in Section 59-10-1203~~]  
1630 if the individual's adjusted gross income on the individual's federal individual income tax  
1631 return for the taxable year is less than or equal to the sum of the individual's:

1632 (a) personal exemptions for that taxable year; and

1633 (b) standard deduction for that taxable year.

1634 Section 26. Section **59-10-110** is amended to read:

1635 **59-10-110. Disallowance of federal tax credits.**

1636 [~~No~~] A credit applied directly to the income tax calculated for federal income tax  
1637 purposes [~~pursuant to~~] in accordance with the Internal Revenue Code [~~shall~~] may not be

1638 applied in calculating the tax due under this chapter.

1639 Section 27. Section **59-10-114** is amended to read:

1640 **59-10-114. Additions to and subtractions from adjusted gross income of an**  
1641 **individual.**

1642 (1) There shall be added to [~~federal taxable~~] adjusted gross income of a resident or  
1643 nonresident individual:

1644 [~~(a) the amount of any income tax imposed by this or any predecessor Utah individual~~  
1645 ~~income tax law and the amount of any income tax imposed by the laws of another state, the~~  
1646 ~~District of Columbia, or a possession of the United States, to the extent deducted from adjusted~~  
1647 ~~gross income in determining federal taxable income;~~]

1648 [~~(b)~~] (a) a lump sum distribution that the taxpayer does not include in adjusted gross  
1649 income on the taxpayer's federal individual income tax return for the taxable year;

1650 [~~(c)~~] (b) [~~for taxable years beginning on or after January 1, 2002,~~] the amount of a  
1651 child's income calculated under Subsection [~~(5)~~] (4) that:

1652 (i) a parent elects to report on the parent's federal individual income tax return for the  
1653 taxable year; and

1654 (ii) the parent does not include in adjusted gross income on the parent's federal  
1655 individual income tax return for the taxable year;

1656 [~~(d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue~~  
1657 ~~Code;~~]

1658 [~~(e)~~] (c) (i) a withdrawal from a medical care savings account and any penalty imposed  
1659 [~~in~~] for the taxable year if:

1660 [~~(i)~~] (A) the resident or nonresident individual [~~did~~] does not deduct [~~or include~~] the  
1661 amounts on the resident or nonresident individual's federal individual income tax return  
1662 [~~pursuant to~~] under Section 220, Internal Revenue Code;

1663 [~~(ii)~~] (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

1664 [~~(iii)~~] (C) the withdrawal is [~~deducted by~~];

1665 (I) subtracted on a return the resident or nonresident individual [~~under Subsection~~  
1666 ~~(2)(h)~~]; files under this chapter for a taxable year beginning on or before December 31, 2007;  
1667 or

1668 (II) used as the basis for a resident or nonresident individual to claim a tax credit under

1669 Section 59-10-1021;

1670 (ii) a disbursement required to be added to adjusted gross income in accordance with

1671 Subsection 31A-32a-105(3); or

1672 (iii) an amount required to be added to adjusted gross income in accordance with

1673 Subsection 31A-32a-105(5)(c);

1674 ~~[(f)]~~ (d) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings

1675 Incentive Program, from the account of a resident or nonresident individual who is an account

1676 owner as defined in Section 53B-8a-102, for the taxable year for which the amount is

1677 withdrawn, if that amount withdrawn from the account of the resident or nonresident individual

1678 who is the account owner:

1679 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and

1680 (ii) is:

1681 (A) subtracted by the resident or nonresident individual:

1682 (I) who is the account owner; and

1683 ~~[(H) in accordance with Subsection (2)(i); or]~~

1684 (II) on the resident or nonresident individual's return filed under this chapter for a

1685 taxable year beginning on or before December 31, 2007; or

1686 (B) used as the basis for the resident or nonresident individual who is the account

1687 owner to claim a tax credit under Section ~~[59-10-1206.1]~~ 59-10-1017;

1688 ~~[(g)]~~ (e) except as provided in Subsection (6), ~~[for taxable years beginning on or after~~

1689 ~~January 1, 2003;]~~ for bonds, notes, and other evidences of indebtedness acquired on or after

1690 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by

1691 one or more of the following entities:

1692 (i) a state other than this state;

1693 (ii) the District of Columbia;

1694 (iii) a political subdivision of a state other than this state; or

1695 (iv) an agency or instrumentality of an entity described in Subsections (1)~~[(g)]~~(e)(i)

1696 through (iii);

1697 ~~[(h)]~~ (f) subject to Subsection (2)~~[(m)]~~(c), any distribution received by a resident

1698 beneficiary of a resident trust of income that was taxed at the trust level for federal tax

1699 purposes, but was subtracted from state taxable income of the trust pursuant to Subsection

1700 59-10-202(2)(~~e~~)(b);

1701       [~~(f)~~] (g) any distribution received by a resident beneficiary of a nonresident trust of  
1702 undistributed distributable net income realized by the trust on or after January 1, 2004, if that  
1703 undistributed distributable net income was taxed at the trust level for federal tax purposes, but  
1704 was not taxed at the trust level by any state, with undistributed distributable net income  
1705 considered to be distributed from the most recently accumulated undistributed distributable net  
1706 income; and

1707       [~~(f)~~] (h) any adoption expense:

1708           (i) for which a resident or nonresident individual receives reimbursement from another  
1709 person; and

1710           (ii) to the extent to which the resident or nonresident individual [~~deducts~~] subtracts that  
1711 adoption expense:

1712           [~~(A) under Subsection (2)(c); or~~]

1713           (A) on a return filed under this chapter for a taxable year beginning on or before  
1714 December 31, 2007; or

1715           (B) from federal taxable income on a federal individual income tax return.

1716       (2) There shall be subtracted from [~~federal taxable~~] adjusted gross income of a resident  
1717 or nonresident individual:

1718           (a) the difference between:

1719           [~~(a)~~] (i) the interest or a dividend on [~~obligations or securities~~] an obligation or security  
1720 of the United States [~~and its possessions or of any~~] or an authority, commission, [~~or~~]  
1721 instrumentality, or possession of the United States, to the extent that interest or dividend is:

1722           (A) included in adjusted gross income for federal income tax purposes for the taxable  
1723 year [but]; and

1724           (B) exempt from state income taxes under the laws of the United States[~~; but the~~  
1725 amount subtracted under this Subsection (2)(a) shall be reduced by]; and

1726           (ii) any interest on indebtedness incurred or continued to purchase or carry the  
1727 [~~obligations or securities~~] obligation or security described in [~~this~~] Subsection (2)(a)(i)[~~; and by~~  
1728 ~~any expenses incurred in the production of interest or dividend income described in this~~  
1729 ~~Subsection (2)(a) to the extent that such expenses, including amortizable bond premiums, are~~  
1730 ~~deductible in determining federal taxable income];~~

1731 ~~[(b) 1/2 of the net amount of any income tax paid or payable to the United States after~~  
1732 ~~all allowable credits, as reported on the United States individual income tax return of the~~  
1733 ~~taxpayer for the same taxable year;]~~

1734 ~~[(c) the amount of adoption expenses for one of the following taxable years as elected~~  
1735 ~~by the resident or nonresident individual:]~~

1736 ~~[(i) regardless of whether a court issues an order granting the adoption, the taxable year~~  
1737 ~~in which the adoption expenses are:]~~

1738 ~~[(A) paid; or]~~

1739 ~~[(B) incurred;]~~

1740 ~~[(ii) the taxable year in which a court issues an order granting the adoption; or]~~

1741 ~~[(iii) any year in which the resident or nonresident individual may claim the federal~~  
1742 ~~adoption expenses credit under Section 23, Internal Revenue Code;]~~

1743 ~~[(d) amounts received by taxpayers under age 65 as retirement income which, for~~  
1744 ~~purposes of this section, means pensions and annuities, paid from an annuity contract~~  
1745 ~~purchased by an employer under a plan which meets the requirements of Section 404(a)(2),~~  
1746 ~~Internal Revenue Code, or purchased by an employee under a plan which meets the~~  
1747 ~~requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or~~  
1748 ~~political subdivision thereof, or the District of Columbia, to the employee involved or the~~  
1749 ~~surviving spouse;]~~

1750 ~~[(e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500~~  
1751 ~~personal retirement exemption;]~~

1752 ~~[(f) 75% of the amount of the personal exemption, as defined and calculated in the~~  
1753 ~~Internal Revenue Code, for each dependent child with a disability and adult with a disability~~  
1754 ~~who is claimed as a dependent on a taxpayer's return;]~~

1755 ~~[(g) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the~~  
1756 ~~taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:]~~

1757 ~~[(i) for:]~~

1758 ~~[(A) the taxpayer;]~~

1759 ~~[(B) the taxpayer's spouse; and]~~

1760 ~~[(C) the taxpayer's dependents; and]~~

1761 ~~[(ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or~~

1762 213, Internal Revenue Code, in determining federal taxable income for the taxable year;]

1763       ~~[(h) (i) except as provided in this Subsection (2)(h), the amount of a contribution made~~  
1764 ~~during the taxable year on behalf of the taxpayer to a medical care savings account and interest~~  
1765 ~~earned on a contribution to a medical care savings account established pursuant to Title 31A,~~  
1766 ~~Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by~~  
1767 ~~the account administrator as provided in the Medical Care Savings Account Act, and if the~~  
1768 ~~taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax~~  
1769 ~~return pursuant to Section 220, Internal Revenue Code; and]~~

1770       ~~[(ii) a contribution deductible under this Subsection (2)(h) may not exceed either of the~~  
1771 ~~following:]~~

1772       ~~[(A) the maximum contribution allowed under the Medical Care Savings Account Act~~  
1773 ~~for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is~~  
1774 ~~covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that~~  
1775 ~~covers the other spouse, and each spouse has a medical care savings account; or]~~

1776       ~~[(B) the maximum contribution allowed under the Medical Care Savings Account Act~~  
1777 ~~for the tax year for taxpayers:]~~

1778       ~~[(I) who do not file a joint return; or]~~

1779       ~~[(II) who file a joint return, but do not qualify under Subsection (2)(h)(ii)(A);]~~

1780       ~~[(i) subject to Subsection (1)(f), the amount of a qualified investment as defined in~~  
1781 ~~Section 53B-8a-102 that:]~~

1782       ~~[(i) a resident or nonresident individual who is an account owner as defined in Section~~  
1783 ~~53B-8a-102 makes during the taxable year;]~~

1784       ~~[(ii) the resident or nonresident individual described in Subsection (2)(i)(i) does not~~  
1785 ~~deduct on a federal individual income tax return; and]~~

1786       ~~[(iii) does not exceed the maximum amount of the qualified investment that may be~~  
1787 ~~subtracted from federal taxable income for a taxable year in accordance with Subsections~~  
1788 ~~53B-8a-106(1)(e) and (f);]~~

1789       ~~[(j) for taxable years beginning on or after January 1, 2000, any amounts paid for~~  
1790 ~~premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the~~  
1791 ~~amounts paid for long-term care insurance were not deducted under Section 213, Internal~~  
1792 ~~Revenue Code, in determining federal taxable income;]~~

1793           ~~[(k)]~~ (b) for taxable years beginning on or after January 1, 2000, if the conditions of  
 1794 Subsection ~~[(4)]~~ (3)(a) are met, the amount of income derived by a Ute tribal member:

1795           (i) during a time period that the Ute tribal member resides on homesteaded land  
 1796 diminished from the Uintah and Ouray Reservation; and

1797           (ii) from a source within the Uintah and Ouray Reservation;

1798           ~~[(1)(i) for taxable years beginning on or after January 1, 2003, the total amount of a  
 1799 resident or nonresident individual's short-term capital gain or long-term capital gain on a  
 1800 capital gain transaction:]~~

1801           ~~[(A) that occurs on or after January 1, 2003;]~~

1802           ~~[(B) if 70% or more of the gross proceeds of the capital gain transaction are expended:]~~

1803           ~~[(F) to purchase qualifying stock in a Utah small business corporation; and]~~

1804           ~~[(H) within a 12-month period after the day on which the capital gain transaction  
 1805 occurs; and]~~

1806           ~~[(C) if, prior to the purchase of the qualifying stock described in Subsection  
 1807 (2)(1)(i)(B)(F), the resident or nonresident individual did not have an ownership interest in the  
 1808 Utah small business corporation that issued the qualifying stock; and]~~

1809           ~~[(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
 1810 the commission may make rules:]~~

1811           ~~[(A) defining the term "gross proceeds"; and]~~

1812           ~~[(B) for purposes of Subsection (2)(1)(i)(C), prescribing the circumstances under which  
 1813 a resident or nonresident individual has an ownership interest in a Utah small business  
 1814 corporation;]~~

1815           ~~[(m) for the taxable year beginning on or after January 1, 2005, but beginning on or  
 1816 before December 31, 2005, the first \$2,200 of income a qualifying military servicemember  
 1817 receives:]~~

1818           ~~[(i) for service:]~~

1819           ~~[(A) as a qualifying military servicemember; or]~~

1820           ~~[(B) under an order into active service in accordance with Section 39-1-5; and]~~

1821           ~~[(ii) to the extent that income is included in adjusted gross income on that resident or  
 1822 nonresident individual's federal individual income tax return for that taxable year;]~~

1823           ~~[(n)]~~ (c) an amount received by a resident or nonresident individual or distribution

1824 received by a resident or nonresident beneficiary of a resident trust:

1825 (i) if that amount or distribution constitutes a refund of taxes imposed by:

1826 (A) a state; or

1827 (B) the District of Columbia; and

1828 (ii) to the extent that amount or distribution is included in adjusted gross income for

1829 that taxable year on the federal individual income tax return of the resident or nonresident

1830 individual or resident or nonresident beneficiary of a resident trust;

1831 ~~[(p)]~~ (d) the amount of a railroad retirement benefit:

1832 (i) paid:

1833 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et

1834 seq.;

1835 (B) to a resident or nonresident individual; and

1836 (C) for the taxable year; and

1837 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on

1838 that resident or nonresident individual's federal individual income tax return for that taxable

1839 year; and

1840 ~~[(p)]~~ (e) an amount:

1841 (i) received by an enrolled member of an American Indian tribe; and

1842 (ii) to the extent that the state is not authorized or permitted to impose a tax under this

1843 part on that amount in accordance with:

1844 (A) federal law;

1845 (B) a treaty; or

1846 (C) a final decision issued by a court of competent jurisdiction.

1847 ~~[(3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted~~

1848 ~~for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or~~

1849 ~~\$4,800, except that:]~~

1850 ~~[(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income~~

1851 ~~earned over \$32,000, the amount of the retirement income exemption that may be subtracted~~

1852 ~~shall be reduced by 50 cents;]~~

1853 ~~[(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income~~

1854 ~~earned over \$16,000, the amount of the retirement income exemption that may be subtracted~~

1855 shall be reduced by 50 cents; and]

1856 [(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
1857 \$25,000, the amount of the retirement income exemption that may be subtracted shall be  
1858 reduced by 50 cents;]

1859 [(b) For purposes of Subsection (2)(c), the amount of the personal retirement  
1860 exemption shall be further reduced according to the following schedule:]

1861 [(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income  
1862 earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50  
1863 cents;]

1864 [(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income  
1865 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50  
1866 cents; and]

1867 [(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
1868 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents;]

1869 [(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be  
1870 calculated by adding to adjusted gross income any interest income not otherwise included in  
1871 adjusted gross income;]

1872 [(d) For purposes of determining ownership of items of retirement income common  
1873 law doctrine will be applied in all cases even though some items may have originated from  
1874 service or investments in a community property state. Amounts received by the spouse of a  
1875 living retiree because of the retiree's having been employed in a community property state are  
1876 not deductible as retirement income of such spouse;]

1877 [(e) For purposes of Subsection (2)(g), a subtraction for an amount paid for health care  
1878 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed;]

1879 [(i) for an amount that is reimbursed or funded in whole or in part by the federal  
1880 government, the state, or an agency or instrumentality of the federal government or the state;  
1881 and]

1882 [(ii) for a taxpayer who is eligible to participate in a health plan maintained and funded  
1883 in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer;]

1884 [(4)] (3) (a) A subtraction for an amount described in Subsection (2)[(4)](b) is allowed  
1885 only if:

1886 (i) the taxpayer is a Ute tribal member; and  
1887 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the  
1888 requirements of this Subsection [~~(4)~~] (3).

1889 (b) The agreement described in Subsection [~~(4)~~] (3)(a):  
1890 (i) may not:  
1891 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;  
1892 (B) provide a subtraction under this section greater than or different from the  
1893 subtraction described in Subsection (2)[~~(4)~~](b); or  
1894 (C) affect the power of the state to establish rates of taxation; and  
1895 (ii) shall:  
1896 (A) provide for the implementation of the subtraction described in Subsection  
1897 (2)[~~(4)~~](b);  
1898 (B) be in writing;  
1899 (C) be signed by:  
1900 (I) the governor; and  
1901 (II) the chair of the Business Committee of the Ute tribe;  
1902 (D) be conditioned on obtaining any approval required by federal law; and  
1903 (E) state the effective date of the agreement.

1904 (c) (i) The governor shall report to the commission by no later than February 1 of each  
1905 year regarding whether or not an agreement meeting the requirements of this Subsection [~~(4)~~]  
1906 (3) is in effect.  
1907 (ii) If an agreement meeting the requirements of this Subsection [~~(4)~~] (3) is terminated,  
1908 the subtraction permitted under Subsection (2)[~~(4)~~](b) is not allowed for taxable years  
1909 beginning on or after the January 1 following the termination of the agreement.

1910 (d) For purposes of Subsection (2)[~~(4)~~](b) and in accordance with Title 63, Chapter  
1911 46a, Utah Administrative Rulemaking Act, the commission may make rules:  
1912 (i) for determining whether income is derived from a source within the Uintah and  
1913 Ouray Reservation; and  
1914 (ii) that are substantially similar to how adjusted gross income derived from Utah  
1915 sources is determined under Section 59-10-117.

1916 [~~(5)~~] (4) (a) For purposes of this Subsection [~~(5)~~] (4), "Form 8814" means:

- 1917 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's  
1918 Interest and Dividends; or
- 1919 (ii) (A) [~~for taxable years beginning on or after January 1, 2002,~~] a form designated by  
1920 the commission in accordance with Subsection [~~(5)~~] (4)(a)(ii)(B) as being substantially similar  
1921 to 2000 Form 8814 if for purposes of federal individual income taxes the information  
1922 contained on 2000 Form 8814 is reported on a form other than Form 8814; and
- 1923 (B) for purposes of Subsection [~~(5)~~] (4)(a)(ii)(A) and in accordance with Title 63,  
1924 Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules  
1925 designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal  
1926 individual income taxes the information contained on 2000 Form 8814 is reported on a form  
1927 other than Form 8814.
- 1928 (b) The amount of a child's income added to adjusted gross income under Subsection  
1929 (1)[~~(c)~~](b) is equal to the difference between:
- 1930 (i) the lesser of:
- 1931 (A) the base amount specified on Form 8814; and
- 1932 (B) the sum of the following reported on Form 8814:
- 1933 (I) the child's taxable interest;
- 1934 (II) the child's ordinary dividends; and
- 1935 (III) the child's capital gain distributions; and
- 1936 (ii) the amount not taxed that is specified on Form 8814.
- 1937 [~~(6)~~] (5) Notwithstanding Subsection (1)[~~(g)~~](e), interest from bonds, notes, and other  
1938 evidences of indebtedness issued by an entity described in Subsections (1)[~~(g)~~](e)(i) through  
1939 (iv) may not be added to [~~federal taxable~~] adjusted gross income of a resident or nonresident  
1940 individual if, as annually determined by the commission:
- 1941 (a) for an entity described in Subsection (1)[~~(g)~~](e)(i) or (ii), the entity and all of the  
1942 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
1943 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
- 1944 (b) for an entity described in Subsection (1)[~~(g)~~](e)(iii) or (iv), the following do not  
1945 impose a tax based on income on any part of the bonds, notes, and other evidences of  
1946 indebtedness of this state:
- 1947 (i) the entity; or

1948 (ii) (A) the state in which the entity is located; or  
1949 (B) the District of Columbia, if the entity is located within the District of Columbia.

1950 Section 28. Section **59-10-115** is amended to read:

1951 **59-10-115. Adjustments to adjusted gross income.**

1952 (1) The commission shall allow an adjustment to ~~[federal taxable]~~ adjusted gross  
1953 income of a [taxpayer] resident or nonresident individual if the ~~[taxpayer] resident or~~  
1954 nonresident individual would otherwise:

1955 (a) receive a double tax benefit under this part; or

1956 (b) suffer a double tax detriment under this part.

1957 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1958 commission may make rules to allow for the adjustment to ~~[federal taxable]~~ adjusted gross  
1959 income required by Subsection (1).

1960 Section 29. Section **59-10-116** is amended to read:

1961 **59-10-116. Tax on nonresident individual -- Calculation -- Exemption.**

1962 ~~[(1) For purposes of this section:]~~

1963 ~~[(a) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.]~~

1964 ~~[(b) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.]~~

1965 ~~[(c) "State income tax percentage" means a percentage equal to a nonresident~~  
1966 ~~individual's adjusted gross income for the taxable year received from Utah sources, as~~  
1967 ~~determined under Section 59-10-117, divided by the difference between:]~~

1968 ~~[(i) the nonresident individual's total adjusted gross income for that taxable year; and]~~

1969 ~~[(ii) if the nonresident individual described in Subsection (1)(c)(i) is a servicemember,~~  
1970 ~~the compensation the servicemember receives for military service if the servicemember is~~  
1971 ~~serving in compliance with military orders.]~~

1972 ~~[(d) "State taxable income" means a nonresident individual's federal taxable income~~  
1973 ~~after making the:]~~

1974 ~~[(i) additions and subtractions required by Section 59-10-114; and]~~

1975 ~~[(ii) adjustments required by Section 59-10-115.]~~

1976 ~~[(e) "Unapportioned state tax" means the product of the:]~~

1977 ~~[(i) difference between:]~~

1978 ~~[(A) a nonresident individual's state taxable income; and]~~

1979           ~~[(B) if the nonresident individual described in Subsection (1)(e)(i)(A) is a~~  
1980 ~~servicemember, compensation the servicemember receives for military service if the~~  
1981 ~~servicemember is serving in compliance with military orders; and]~~  
1982           ~~[(ii) tax rate imposed under Section 59-10-104.]~~  
1983           ~~[(2)] (1) Except as provided in Subsection [(3)] (2) [or Part 12, Single Rate Individual~~  
1984 ~~Income Tax Act], a tax is imposed on a nonresident individual in an amount equal to the~~  
1985 ~~product of the [nonresident individual's]:~~  
1986           ~~[(a) unapportioned state tax; and]~~  
1987           ~~[(b) state income tax percentage.]~~  
1988           (a) nonresident individual's state taxable income; and  
1989           (b) percentage listed in Subsection 59-10-104(2).  
1990           ~~[(3)] (2) This section does not apply to a nonresident individual exempt from taxation~~  
1991 ~~under Section 59-10-104.1.~~  
1992           ~~[(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~  
1993 ~~for purposes of Subsection (1), the commission may by rule define what constitutes~~  
1994 ~~compensation.]~~  
1995           Section 30. Section **59-10-117** is amended to read:  
1996           **59-10-117. State taxable income derived from Utah sources.**  
1997           (1) For purposes of Section 59-10-116, ~~[adjusted gross]~~ state taxable income ~~[derived~~  
1998 ~~from Utah sources]~~ includes those items includable in ~~[adjusted gross]~~ state taxable income  
1999 attributable to or resulting from:  
2000           (a) the ownership in this state of any interest in real or tangible personal property,  
2001 including real property or property rights from which ~~[“]gross income from mining[,”]~~ as  
2002 defined by Section 613(c), Internal Revenue Code, is derived; or  
2003           (b) the carrying on of a business, trade, profession, or occupation in this state.  
2004           (2) For the purposes of Subsection (1):  
2005           (a) income from intangible personal property, including annuities, dividends, interest,  
2006 and gains from the disposition of intangible personal property shall constitute income derived  
2007 from Utah sources only to the extent that ~~[such]~~ the income is from property employed in a  
2008 trade, business, profession, or occupation carried on in this state;  
2009           (b) ~~[deductions]~~ a deduction with respect to a capital ~~[losses]~~ loss, net long-term capital

2010 ~~[gains]~~ gain, ~~[and]~~ or net operating ~~[losses]~~ loss shall be based solely on income, gain, loss, and  
2011 deduction connected with Utah sources, under rules prescribed by the commission in  
2012 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, but otherwise  
2013 shall be determined in the same manner as the corresponding federal deductions;

2014 (c) ~~[salaries, wages, commissions, and]~~ a salary, wage, commission, or compensation  
2015 for personal services rendered outside this state ~~[shall]~~ may not be considered to be derived  
2016 from Utah sources;

2017 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and  
2018 deduction derived from or connected with Utah sources shall be determined under Section  
2019 59-10-118;

2020 (e) a nonresident, other than a dealer holding property primarily for sale to customers  
2021 in the ordinary course of the dealer's trade or business, may not be considered to carry on a  
2022 trade, business, profession, or occupation in this state solely by reason of the purchase or sale  
2023 of property for the nonresident's own account;

2024 (f) if a trade, business, profession, or occupation is carried on partly within and partly  
2025 without this state, ~~[items]~~ an item of income, gain, loss, ~~[and deductions]~~ or a deduction  
2026 derived from or connected with Utah sources shall be determined in accordance with ~~[the~~  
2027 ~~provisions of]~~ Section 59-10-118;

2028 (g) a nonresident partner's distributive share of partnership income, gain, loss, and  
2029 deduction derived from or connected with Utah sources shall be determined under Section  
2030 ~~[59-10-303]~~ 59-10-1405;

2031 (h) the share of a nonresident estate or trust ~~[and nonresident beneficiaries]~~ or a  
2032 nonresident beneficiary of any estate or trust in income, gain, loss, ~~[and]~~ or deduction derived  
2033 from or connected with Utah sources shall be determined under Section 59-10-207; and

2034 (i) any dividend, interest, or distributive share of income, gain, or loss from a real  
2035 estate investment trust, as defined in Section ~~[59-7-116.5]~~ 59-7-101, distributed or allocated to  
2036 a nonresident investor in the trust, including any shareholder, beneficiary, or owner of a  
2037 beneficial interest in the trust, shall be income from intangible personal property under  
2038 Subsection (2)(a), and shall constitute income derived from Utah sources only to the extent the  
2039 nonresident investor is employing its beneficial interest in the trust in a trade, business,  
2040 profession, or occupation carried on by the investor in this state.

2041 Section 31. Section **59-10-118** is amended to read:

2042 **59-10-118. Division of income for tax purposes.**

2043 (1) As used in this section [~~unless the context otherwise requires~~]:

2044 (a) "Business income" means income arising from transactions and activity in the  
2045 regular course of [~~the~~] a taxpayer's trade or business and includes income from tangible and  
2046 intangible property if the acquisition, management, and disposition of the property constitutes  
2047 integral parts of the taxpayer's regular trade or business operations.

2048 (b) "Commercial domicile" means the principal place from which the trade or business  
2049 of [~~the~~] a taxpayer is directed or managed.

2050 [~~(c) "Compensation" means wages, salaries, commissions, and any other form of~~  
2051 ~~remuneration paid to employee for personal services.~~]

2052 [~~(d)~~] (c) "Nonbusiness income" means all income other than business income.

2053 [~~(e)~~] (d) "Sales" means all gross receipts of [~~the~~] a taxpayer not allocated under  
2054 Subsections (3) through (7).

2055 [~~(f)~~] (e) "State" means any state of the United States, the District of Columbia, the  
2056 commonwealth of Puerto Rico, [~~and~~] or any possession of the United States.

2057 (2) [~~Any~~] A taxpayer having business income [~~which~~] that is taxable both within and  
2058 without this state, shall allocate and apportion [~~his~~] the taxpayer's net income as provided in  
2059 this section.

2060 (3) Rents and royalties from real or tangible personal property, capital gains, interest,  
2061 dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness  
2062 income, shall be allocated as provided in Subsections (4) through (7).

2063 (4) (a) Net rents and royalties from real property located in this state are allocable to  
2064 this state.

2065 (b) Net rents and royalties from tangible personal property are allocable to this state:

2066 (i) if and to the extent that the property is utilized in this state; or

2067 (ii) in their entirety if the taxpayer's commercial domicile is in this state and the  
2068 taxpayer is not organized under the laws of or taxable in the state in which the property is  
2069 utilized.

2070 (c) The extent of utilization of tangible personal property in a state is determined by  
2071 multiplying the rents and royalties by a fraction, the numerator of which is the number of days

2072 of physical location of the property in the state during the rental or royalty period in the taxable  
2073 year and the denominator of which is the number of days of physical location of the property  
2074 everywhere during all rental or royalty periods in the taxable year. If the physical location of  
2075 the property during the rental or royalty period is unknown or unascertainable by the taxpayer,  
2076 tangible personal property is utilized in the state in which the property was located at the time  
2077 the rental or royalty payer obtained possession.

2078 (5) (a) Capital gains and losses from sales of real property located in this state are  
2079 allocable to this state.

2080 (b) Capital gains and losses from sales of tangible personal property are allocable to  
2081 this state if:

2082 (i) the property ~~had~~ has a situs in this state at the time of the sale; or

2083 (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in  
2084 the state in which the property had a situs.

2085 (c) Capital gains and losses from sales of intangible personal property are allocable to  
2086 this state if the taxpayer's commercial domicile is in this state.

2087 (6) Interest and dividends are allocable to this state if the taxpayer's commercial  
2088 domicile is in this state.

2089 (7) (a) Patent and copyright royalties are allocable to this state:

2090 (i) if and to the extent that the patent or copyright is utilized by the payer in this state;  
2091 or

2092 (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in  
2093 which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

2094 (b) A patent is utilized in a state to the extent that it is employed in production,  
2095 fabrication, manufacturing, or other processing in the state or to the extent that a patented  
2096 product is produced in the state. If the basis of receipts from patent royalties does not permit  
2097 allocation to states or if the accounting procedures do not reflect states of utilization, the patent  
2098 is utilized in the state in which the taxpayer's commercial domicile is located.

2099 (8) All business income shall be apportioned to this state ~~[by multiplying the income~~  
2100 ~~by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales~~  
2101 ~~factor, and the denominator of which is three]~~ using the same methods, procedures, and  
2102 requirements of Sections 59-7-311 through 59-7-320.

2103           ~~[(9) The property factor is a fraction, the numerator of which is the average value of the~~  
2104 ~~taxpayer's real and tangible personal property owned or rented and used in this state during the~~  
2105 ~~tax period and the denominator of which is the average value of all the taxpayer's real and~~  
2106 ~~tangible personal property owned or rented and used during the tax period.]~~

2107           ~~[(10) Property owned by the taxpayer is valued at its original cost. Property rented by~~  
2108 ~~the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the~~  
2109 ~~annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from~~  
2110 ~~subrentals.]~~

2111           ~~[(11) The average value of property shall be determined by averaging the values at the~~  
2112 ~~beginning and ending of the tax period but the commission may require the averaging of~~  
2113 ~~monthly values during the tax period, if reasonably required to reflect properly the average~~  
2114 ~~value of the taxpayer's property.]~~

2115           ~~[(12) The payroll factor is a fraction, the numerator of which is the total amount paid in~~  
2116 ~~this state during the tax period by the taxpayer for compensation, and the denominator of which~~  
2117 ~~is the total compensation paid everywhere during the tax period.]~~

2118           ~~[(13) Compensation is paid in this state if:]~~

2119           ~~[(a) the individual's service is performed entirely within the state; or]~~

2120           ~~[(b) the individual's service is performed both within and without the state, but the~~  
2121 ~~service performed without the state is incidental to the individual's service within the state; or]~~

2122           ~~[(c) some of the service is performed in the state and:]~~

2123           ~~[(i) the base of operations or, if there is no base of operations, the place from which the~~  
2124 ~~service is directed or controlled is in the state; or]~~

2125           ~~[(ii) the base of operations or the place from which the service is directed or controlled~~  
2126 ~~is not in any state in which some part of the service is performed, but the individual's residence~~  
2127 ~~is in this state.]~~

2128           ~~[(14) The sales factor is a fraction, the numerator of which is the total sales of the~~  
2129 ~~taxpayer in this state during the tax period, and the denominator of which is the total sales of~~  
2130 ~~the taxpayer everywhere during the tax period.]~~

2131           ~~[(15) Sales of tangible personal property are in this state if the property is delivered or~~  
2132 ~~shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of the~~  
2133 ~~sale.]~~

2134 ~~[(16) Sales, other than sales of tangible personal property, are in this state if:]~~  
2135 ~~[(a) the income-producing activity is performed in this state; or]~~  
2136 ~~[(b) the income-producing activity is performed both in and outside this state and a~~  
2137 ~~greater proportion of the income-producing activity is performed in this state than in any other~~  
2138 ~~state, based on costs of performance.]~~

2139 ~~[(17) If the allocation and apportionment provisions of this chapter do not fairly~~  
2140 ~~represent the extent of the taxpayer's business activity in this state, the taxpayer may petition~~  
2141 ~~for or the commission may require, in respect of all or any part of the taxpayer's business~~  
2142 ~~activity, if reasonable:]~~

2143 ~~[(a) separate accounting;]~~

2144 ~~[(b) the exclusion of any one or more of the factors;]~~

2145 ~~[(c) the inclusion of one or more additional factors which will fairly represent the~~  
2146 ~~taxpayer's business activity in this state; or]~~

2147 ~~[(d) the employment of any other method to effectuate an equitable allocation and~~  
2148 ~~apportionment of the taxpayer's income.]~~

2149 Section 32. Section **59-10-119** is amended to read:

2150 **59-10-119. Returns by husband and wife, either or both of whom is a**  
2151 **nonresident.**

2152 (1) If the ~~[federal taxable]~~ adjusted gross income of a husband and wife ~~[(f) who are~~  
2153 ~~both nonresidents of this state)]~~ is reported or determined on separate federal individual  
2154 income tax returns, ~~[their]~~ the husband's and wife's state taxable incomes in this state shall be  
2155 separately determined.

2156 (2) If the ~~[federal taxable]~~ adjusted gross income of a husband and wife ~~[(f) who are~~  
2157 ~~both nonresidents)]~~ of this state is reported or determined on a joint federal individual income  
2158 tax return ~~[their]~~, the husband's and wife's tax shall be reported or determined in this state on a  
2159 joint return.

2160 (3) (a) If ~~[either husband or wife]~~ one spouse is a nonresident of this state and the other  
2161 spouse is a resident of this state, separate taxes shall be determined on ~~[their]~~ each spouse's  
2162 separate state taxable incomes on ~~[such forms as the commission shall prescribe, unless both~~  
2163 ~~elect to determine their state taxable income as if both were residents]~~ forms prescribed by the  
2164 commission.

2165 (b) Notwithstanding Subsection (3)(a), a husband and wife may elect to be considered  
 2166 to be residents of this state for purposes of determining state taxable income for a taxable year.

2167 (c) If [a husband and wife (one being a resident, the other a nonresident)] one spouse  
 2168 who is a nonresident of this state and the other spouse who is a resident of this state file a joint  
 2169 federal income tax return, but determine [their] state taxable income separately, [they] the  
 2170 spouses shall compute their taxable incomes in this state as if their [federal taxable] adjusted  
 2171 gross incomes had been determined separately.

2172 Section 33. Section **59-10-120** is amended to read:

2173 **59-10-120. Change of status as resident or nonresident.**

2174 (1) If an individual changes [his] the individual's status during [his] the taxable year  
 2175 from resident to nonresident or from nonresident to resident, the commission may by rule,  
 2176 made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, require  
 2177 [him] the individual to file one return for the portion of the taxable year during which [he] the  
 2178 individual is a resident and another return for the portion of the taxable year during which [he]  
 2179 the individual is a nonresident.

2180 (2) [~~Except as provided in Subsection (3) the~~] The taxable income of the individual  
 2181 described in Subsection (1) shall be determined as provided in this chapter for residents and for  
 2182 nonresidents as if the individual's taxable year for federal income tax purposes were limited to  
 2183 the period of [his] the individual's resident and nonresident status respectively.

2184 [~~(3) There shall be included in determining taxable income from sources within or~~  
 2185 ~~without this state, as the case may be, income, gain, loss, or deduction accrued prior to the~~  
 2186 ~~change of status, even though not otherwise includable or allowable in respect of the period~~  
 2187 ~~prior to such change, but the taxation or deduction of items received or accrued prior to the~~  
 2188 ~~change of status shall not be affected by the change.~~]

2189 Section 34. Section **59-10-121** is amended to read:

2190 **59-10-121. Proration when two returns required.**

2191 [~~Where two returns are required to be filed as provided in~~] If an individual is required  
 2192 to file two returns for a taxable year under Section 59-10-120:

2193 (1) personal exemptions and the standard deduction as used on the federal individual  
 2194 income tax return shall be prorated between the two returns, under rules prescribed by the  
 2195 commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to

2196 reflect the proportions of the taxable year during which the individual was a resident and a  
2197 nonresident; and

2198 (2) the total amount of the taxes due ~~[thereon shall]~~ on the two returns may not be less  
2199 than the total amount of the taxes that would be due if the total of the taxable incomes reported  
2200 on the two returns ~~[were includable]~~ had been included in one return.

2201 Section 35. Section **59-10-122** is amended to read:

2202 **59-10-122. Taxable year.**

2203 (1) For purposes of ~~[the]~~ a tax imposed by this chapter, [a taxpayer's] the taxable year  
2204 of a resident or nonresident individual or resident or nonresident estate or trust shall be the  
2205 same as [his] the taxable year of the resident or nonresident individual or resident or  
2206 nonresident estate or trust for federal income tax purposes.

2207 (2) (a) If ~~[a taxpayer's]~~ the taxable year of a resident or nonresident individual or  
2208 resident or nonresident estate or trust is changed for federal income tax purposes, [his] that  
2209 taxable year for purposes of [the] a tax imposed by this chapter shall be [similarly] changed in  
2210 the same manner as the change for federal income tax purposes.

2211 (b) If a change in a taxable year results in a taxable period of less than 12 months for  
2212 federal income tax purposes, ~~[the]~~ that same taxable period shall be used in computing [the] a  
2213 tax imposed by this chapter.

2214 Section 36. Section **59-10-123** is amended to read:

2215 **59-10-123. Accounting method.**

2216 (1) For purposes of ~~[the]~~ a tax imposed by this chapter, a [taxpayer's] resident or  
2217 nonresident individual's or resident or nonresident estate's or trust's method of accounting shall  
2218 be the same as the method [employed] of accounting the resident or nonresident individual or  
2219 resident or nonresident estate or trust uses for federal income tax purposes.

2220 (2) If a ~~[taxpayer's]~~ resident or nonresident individual's or resident or nonresident  
2221 estate's or trust's method of accounting is changed for federal income tax purposes, [his] the  
2222 resident or nonresident individual's or resident or nonresident estate's or trust's method of  
2223 accounting shall be [similarly] changed [and reflected in each return filed for Utah individual  
2224 income tax purposes] in the same manner:

2225 (a) for purposes of a tax imposed by this chapter; and

2226 (b) for any taxable year for which [such] the change in the method of accounting is

2227 [~~reflected in his return~~] made for federal income tax purposes.

2228 Section 37. Section **59-10-124** is amended to read:

2229 **59-10-124. Adjustments between taxable years after change in accounting**  
2230 **method.**

2231 (1) In computing [~~a taxpayer's~~] a resident or nonresident individual's or resident or  
2232 nonresident estate's or trust's state taxable income for [any] a taxable year under a method of  
2233 accounting different from the method under which the [taxpayer's] resident or nonresident  
2234 individual's or resident or nonresident estate's or trust's state taxable income [for the previous  
2235 year] was computed[; there shall be taken into account those adjustments which are  
2236 determined, under rules prescribed by the commission, to be necessary solely by reason of the  
2237 change, to prevent double inclusion or exclusion of an item of gross income, or double  
2238 allowance or disallowance of an item of deduction or credit.] for the previous taxable year,  
2239 state taxable income shall be increased or decreased:

2240 (a) to prevent double inclusion or exclusion of an item of gross income as a result of  
2241 the change in the method of accounting; or

2242 (b) to prevent double allowance or disallowance of a subtraction from or addition to  
2243 gross income as a result of the change in the method of accounting.

2244 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
2245 commission may make rules for making an increase or decrease required by Subsection (1).

2246 Section 38. Section **59-10-125** is amended to read:

2247 **59-10-125. Adjustment after change of accounting method.**

2248 (1) If a taxpayer's method of accounting is changed, other than from an accrual to an  
2249 installment method, any additional tax that results from adjustments determined to be necessary  
2250 solely by reason of the change [~~shall~~] may not be greater than if [~~such~~] those adjustments were  
2251 ratably allocated and included for the taxable year of the change and the preceding taxable  
2252 years, not in excess of two, during which the taxpayer used the method of accounting from  
2253 which the change is made.

2254 (2) If a taxpayer's method of accounting is changed from an accrual to an installment  
2255 method, any additional tax for the taxable year of [~~such~~] the change [of] in the method of  
2256 accounting and for any subsequent taxable year that is attributable to the receipt of installment  
2257 payments properly accrued in a prior taxable year, shall be reduced by the portion of tax for any

2258 prior taxable year attributable to the accrual of such installment payments, under rules  
2259 prescribed by the commission in accordance with Title 63, Chapter 46a, Utah Administrative  
2260 Rulemaking Act.

2261 Section 39. Section **59-10-126** is amended to read:

2262 **59-10-126. Business entities not subject to tax -- Exceptions.**

2263 (1) [~~An association, trust, or other unincorporated organization~~] A business entity that  
2264 is taxable as a corporation for federal income tax purposes [~~shall~~];

2265 (a) may not be subject to the tax imposed by this chapter[~~; but shall be~~]; and

2266 (b) is subject to [~~the provisions of Title 59;~~] Chapter 7, Corporate Franchise and  
2267 Income Taxes.

2268 [~~(2) To the extent an association, trust, or other unincorporated organization which by~~  
2269 ~~reason of its purposes or activities is exempt from federal income tax, it shall be exempt from~~  
2270 ~~the tax imposed by this chapter, but to the extent that such an otherwise exempt organization~~  
2271 ~~has, or is treated as having, income subject to tax for federal tax purposes, it shall be subject to~~  
2272 ~~the provisions of Title 59, Chapter 7.]~~

2273 (2) A business entity that is exempt from federal income taxation is exempt from the  
2274 tax imposed by this chapter.

2275 (3) Notwithstanding Subsection (2), if a business entity that is exempt from federal  
2276 income taxation has income that is subject to federal income taxation, that income is subject to  
2277 taxation under Chapter 7, Corporate Franchise and Income Taxes.

2278 Section 40. Section **59-10-201** is amended to read:

2279 **59-10-201. Taxation of resident trusts and estates.**

2280 (1) [~~A~~] Except as provided in Subsection (2), a tax determined in accordance with the  
2281 [~~rates~~] rate prescribed by [~~Section 59-10-104 for individuals filing separately~~] Subsection  
2282 59-10-104(2)(b) is imposed for each taxable year on the state taxable income of each resident  
2283 estate or trust[~~, except for trusts~~].

2284 (2) The following are not subject to a tax imposed by this part:

2285 (a) a resident estate or trust that is not required to file a federal income tax return for  
2286 estates and trusts for the taxable year; or

2287 (b) a resident trust taxed as [~~corporations~~] a corporation.

2288 [~~(2)~~] (3) A resident estate or trust shall be allowed the credit provided in Section

2289 59-10-1003, relating to an income tax imposed by another state, except that the limitation shall  
2290 be computed by reference to the taxable income of the estate or trust.

2291 ~~[(3)]~~ (4) The property of the Utah Educational Savings Plan trust established in Title  
2292 53B, Chapter 8a, Higher Education Savings Incentive Program, and its income from operations  
2293 and investments are exempt from all taxation by the state under this chapter.

2294 Section 41. Section **59-10-201.1** is amended to read:

2295 **59-10-201.1. State taxable income of a resident estate or trust defined.**

2296 ~~[The]~~ For a taxable year, the state taxable income of a resident estate or trust means [its  
2297 federal taxable] the unadjusted income [as calculated in Section 641 (a) and (b), Internal  
2298 Revenue Code] of the resident estate or trust for that taxable year, as adjusted by Sections  
2299 59-10-202, 59-10-209.1, and 59-10-210.

2300 Section 42. Section **59-10-202** is amended to read:

2301 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**  
2302 **nonresident estate or trust.**

2303 (1) There shall be added to ~~[-federal taxable]~~ unadjusted income of a resident or  
2304 nonresident estate or trust:

2305 ~~[(a) the amount of any income tax imposed by this or any predecessor Utah individual~~  
2306 ~~income tax law and the amount of any income tax imposed by the laws of another state, the~~  
2307 ~~District of Columbia, or a possession of the United States, to the extent deducted from federal~~  
2308 ~~adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal~~  
2309 ~~taxable income;]~~

2310 ~~[(b)]~~ (a) a lump sum distribution allowable as a deduction under Section 402(d)(3) ~~[of~~  
2311 ~~the]~~, Internal Revenue Code, to the extent deductible under Section 62(a)(8) ~~[of the]~~, Internal  
2312 Revenue Code, in determining adjusted gross income;

2313 ~~[(c)]~~ (b) except as provided in Subsection (3), ~~[for taxable years beginning on or after~~  
2314 ~~January 1, 2003;]~~ for bonds, notes, and other evidences of indebtedness acquired on or after  
2315 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by  
2316 one or more of the following entities:

2317 (i) a state other than this state;

2318 (ii) the District of Columbia;

2319 (iii) a political subdivision of a state other than this state; or

2320 (iv) an agency or instrumentality of an entity described in Subsections (1)~~(c)~~(b)(i)  
 2321 through (iii);

2322 ~~(c)~~ (c) any portion of federal taxable income for a taxable year if that federal taxable  
 2323 income is derived from stock:

2324 (i) in an S corporation; and  
 2325 (ii) that is held by an electing small business trust;

2326 ~~(d)~~ (d) the amount withdrawn under Title 53B, Chapter 8a, Higher Education  
 2327 Savings Incentive Program, from the account of a resident or nonresident estate or trust that is  
 2328 an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount  
 2329 is withdrawn, if that amount withdrawn from the account of the resident or nonresident estate  
 2330 or trust that is the account owner:

2331 ~~(i)~~ (i) is not expended for higher education costs as defined in Section 53B-8a-102;  
 2332 and

2333 ~~(ii)~~ (ii) is:

2334 (A) subtracted by the resident or nonresident estate or trust:

2335 (I) that is the account owner; and  
 2336 ~~(H) in accordance with Subsection (2)(j)(i); and]~~

2337 ~~(ii) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings  
 2338 Incentive Program, from the account of a resident or nonresident estate or trust that is an  
 2339 account owner as defined in Section 53B-8a-102, for the taxable year beginning on or after  
 2340 January 1, 2007, but beginning on or before December 31, 2007, if that amount withdrawn  
 2341 from the account of the resident or nonresident estate or trust that is the account owner:]~~

2342 ~~(A) is not expended for higher education costs as defined in Section 53B-8a-102; and]~~  
 2343 ~~(B) is subtracted by the resident or nonresident estate or trust:]~~

2344 ~~(F) that is the account owner; and]~~

2345 ~~(H) in accordance with Subsection (2)(j)(ii); and]~~

2346 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a  
 2347 taxable year beginning on or before December 31, 2007; or

2348 (B) used as the basis for the resident or nonresident estate or trust that is the account  
 2349 owner to claim a tax credit under Section 59-10-1017; and

2350 ~~(f)~~ (e) any fiduciary adjustments required by Section 59-10-210.

2351 (2) There shall be subtracted from [~~federal taxable~~] unadjusted income of a resident or  
2352 nonresident estate or trust:

2353 (a) the interest or a dividend on obligations or securities of the United States and its  
2354 possessions or of any authority, commission, or instrumentality of the United States, to the  
2355 extent that interest or dividend is included in gross income for federal income tax purposes for  
2356 the taxable year but exempt from state income taxes under the laws of the United States, but  
2357 the amount subtracted under this Subsection (2) shall be reduced by any interest on  
2358 indebtedness incurred or continued to purchase or carry the obligations or securities described  
2359 in this Subsection (2), and by any expenses incurred in the production of interest or dividend  
2360 income described in this Subsection (2) to the extent that such expenses, including amortizable  
2361 bond premiums, are deductible in determining federal taxable income;

2362 [~~(b) 1/2 of the net amount of any income tax paid or payable to the United States after~~  
2363 ~~all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the~~  
2364 ~~same taxable year;~~]

2365 [~~(c)~~] (b) income of an irrevocable resident trust if:

2366 (i) the income would not be treated as state taxable income derived from Utah sources  
2367 under Section 59-10-204 if received by a nonresident trust;

2368 (ii) the trust first became a resident trust on or after January 1, 2004;

2369 (iii) no assets of the trust were held, at any time after January 1, 2003, in another  
2370 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

2371 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

2372 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the  
2373 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,  
2374 Subchapter J, Subpart E of the Internal Revenue Code; and

2375 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on  
2376 indebtedness incurred or continued to purchase or carry the assets generating the income  
2377 described in this Subsection (2)(b), and by any expenses incurred in the production of income  
2378 described in this Subsection (2)(b), to the extent that those expenses, including amortizable  
2379 bond premiums, are deductible in determining federal taxable income;

2380 [~~(d)~~] (c) if the conditions of Subsection (4)(a) are met, the amount of income of a  
2381 resident or nonresident estate or trust derived from a deceased Ute tribal member:

2382 (i) during a time period that the Ute tribal member resided on homesteaded land  
2383 diminished from the Uintah and Ouray Reservation; and  
2384 (ii) from a source within the Uintah and Ouray Reservation;  
2385 ~~[(e) (i) for taxable years beginning on or after January 1, 2003, the total amount of a~~  
2386 ~~resident or nonresident estate's or trust's short-term capital gain or long-term capital gain on a~~  
2387 ~~capital gain transaction:]~~  
2388 ~~[(A) that occurs on or after January 1, 2003;]~~  
2389 ~~[(B) if 70% or more of the gross proceeds of the capital gain transaction are expended:]~~  
2390 ~~[(F) to purchase qualifying stock in a Utah small business corporation; and]~~  
2391 ~~[(H) within a 12-month period after the day on which the capital gain transaction~~  
2392 ~~occurs; and]~~  
2393 ~~[(C) if, prior to the purchase of the qualifying stock described in Subsection~~  
2394 ~~(2)(c)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in~~  
2395 ~~the Utah small business corporation that issued the qualifying stock; and]~~  
2396 ~~[(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~  
2397 ~~the commission may make rules:]~~  
2398 ~~[(A) defining the term "gross proceeds"; and]~~  
2399 ~~[(B) for purposes of Subsection (2)(c)(i)(C), prescribing the circumstances under which~~  
2400 ~~a resident or nonresident estate or trust has an ownership interest in a Utah small business~~  
2401 ~~corporation;]~~  
2402 ~~[(f) for the taxable year beginning on or after January 1, 2005, but beginning on or~~  
2403 ~~before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or~~  
2404 ~~trust that is derived from a deceased qualifying military servicemember:]~~  
2405 ~~[(i) for service:]~~  
2406 ~~[(A) as a qualifying military servicemember; or]~~  
2407 ~~[(B) under an order into active service in accordance with Section 39-1-5; and]~~  
2408 ~~[(ii) to the extent that income is included in total income on that resident or nonresident~~  
2409 ~~estate's or trust's federal income tax return for estates and trusts for that taxable year;]~~  
2410 ~~[(g)] (d) any amount:~~  
2411 (i) received by a resident or nonresident estate or trust;  
2412 (ii) that constitutes a refund of taxes imposed by:

2413 (A) a state; or

2414 (B) the District of Columbia; and

2415 (iii) to the extent that amount is included in total income on that resident or nonresident

2416 estate's or trust's federal tax return for estates and trusts for that taxable year;

2417 ~~[(h)]~~ (e) the amount of a railroad retirement benefit:

2418 (i) paid:

2419 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et

2420 seq.;

2421 (B) to a resident or nonresident estate or trust derived from a deceased resident or

2422 nonresident individual; and

2423 (C) for the taxable year; and

2424 (ii) to the extent that railroad retirement benefit is included in total income on that

2425 resident or nonresident estate's or trust's federal tax return for estates and trusts;

2426 ~~[(i)]~~ (f) an amount:

2427 (i) received by a resident or nonresident estate or trust if that amount is derived from a

2428 deceased enrolled member of an American Indian tribe; and

2429 (ii) to the extent that the state is not authorized or permitted to impose a tax under this

2430 part on that amount in accordance with:

2431 (A) federal law;

2432 (B) a treaty; or

2433 (C) a final decision issued by a court of competent jurisdiction;

2434 ~~[(j) (i) subject to Subsection (1)(e)(i), for taxable years beginning on or after January 1,~~

2435 ~~2007, the amount of a qualified investment as defined in Section 53B-8a-102 that:]~~

2436 ~~[(A) a resident or nonresident estate or trust that is an account owner as defined in~~

2437 ~~Section 53B-8a-102 makes during the taxable year;]~~

2438 ~~[(B) the resident or nonresident estate or trust described in Subsection (2)(j)(i)(A) does~~

2439 ~~not deduct on a federal tax return for estates and trusts; and]~~

2440 ~~[(C) does not exceed the maximum amount of the qualified investment that may be~~

2441 ~~subtracted from federal taxable income for a taxable year in accordance with Subsections~~

2442 ~~53B-8a-106(1)(e) and (f); and]~~

2443 ~~[(ii) subject to Subsection (1)(e)(ii), for the taxable year beginning on or after January~~

2444 1, 2007, but beginning on or before December 31, 2007 only, and in addition to any subtraction  
2445 a resident or nonresident estate or trust that is an account owner as defined in Section  
2446 53B-8a-102 makes in accordance with Subsection (2)(j)(i), the amount of a qualified  
2447 investment as defined in Section 53B-8a-102 that:]

2448 [~~(A) a resident or nonresident estate or trust that is an account owner as defined in~~  
2449 ~~Section 53B-8a-102 could have subtracted under Subsection (2)(j)(i) for the taxable year~~  
2450 ~~beginning on or after January 1, 2006, but beginning on or before December 31, 2006, had the~~  
2451 ~~subtraction under Subsection (2)(j)(i) been in effect for the taxable year beginning on or after~~  
2452 ~~January 1, 2006, but beginning on or before December 31, 2006;]~~

2453 [~~(B) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A)~~  
2454 ~~makes during the taxable year beginning on or after January 1, 2006, but beginning on or~~  
2455 ~~before December 31, 2006;]~~

2456 [~~(C) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A) does~~  
2457 ~~not deduct on a federal tax return for estates and trusts; and]~~

2458 [~~(D) does not exceed the maximum amount of the qualified investment that may be~~  
2459 ~~subtracted from federal taxable income:]~~

2460 [~~(E) for the taxable year beginning on or after January 1, 2006, but beginning on or~~  
2461 ~~before December 31, 2006; and]~~

2462 [~~(H) in accordance with Subsections 53B-8a-106(1)(e) and (f); and]~~

2463 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section  
2464 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the  
2465 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for  
2466 the taxable year; and

2467 [~~(k)~~] (h) any fiduciary adjustments required by Section 59-10-210.

2468 (3) Notwithstanding Subsection (1)[~~(c)~~](b), interest from bonds, notes, and other  
2469 evidences of indebtedness issued by an entity described in Subsections (1)[~~(c)~~](b)(i) through  
2470 (iv) may not be added to [~~federal taxable~~] unadjusted income of a resident or nonresident estate  
2471 or trust if, as annually determined by the commission:

2472 (a) for an entity described in Subsection (1)[~~(c)~~](b)(i) or (ii), the entity and all of the  
2473 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
2474 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

2475 (b) for an entity described in Subsection (1)~~(e)~~(b)(iii) or (iv), the following do not  
2476 impose a tax based on income on any part of the bonds, notes, and other evidences of  
2477 indebtedness of this state:

2478 (i) the entity; or  
2479 (ii) (A) the state in which the entity is located; or  
2480 (B) the District of Columbia, if the entity is located within the District of Columbia.

2481 (4) (a) A subtraction for an amount described in Subsection (2)~~(d)~~(c) is allowed only  
2482 if:

2483 (i) the income is derived from a deceased Ute tribal member; and  
2484 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the  
2485 requirements of this Subsection (4).

2486 (b) The agreement described in Subsection (4)(a):

2487 (i) may not:  
2488 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;  
2489 (B) provide a subtraction under this section greater than or different from the  
2490 subtraction described in Subsection (2)~~(d)~~(c); or  
2491 (C) affect the power of the state to establish rates of taxation; and  
2492 (ii) shall:  
2493 (A) provide for the implementation of the subtraction described in Subsection  
2494 (2)~~(d)~~(c);  
2495 (B) be in writing;  
2496 (C) be signed by:  
2497 (I) the governor; and  
2498 (II) the chair of the Business Committee of the Ute tribe;  
2499 (D) be conditioned on obtaining any approval required by federal law; and  
2500 (E) state the effective date of the agreement.

2501 (c) (i) The governor shall report to the commission by no later than February 1 of each  
2502 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is  
2503 in effect.

2504 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the  
2505 subtraction permitted under Subsection (2)~~(d)~~(c) is not allowed for taxable years beginning

2506 on or after the January 1 following the termination of the agreement.

2507 (d) For purposes of Subsection (2)~~(c)~~(c) and in accordance with Title 63, Chapter  
2508 46a, Utah Administrative Rulemaking Act, the commission may make rules:

2509 (i) for determining whether income is derived from a source within the Uintah and  
2510 Ouray Reservation; and

2511 (ii) that are substantially similar to how adjusted gross income derived from Utah  
2512 sources is determined under Section 59-10-117.

2513 Section 43. Section **59-10-204** is amended to read:

2514 **59-10-204. State taxable income of a nonresident estate or trust.**

2515 ~~[The]~~ For a taxable year, the state taxable income of a nonresident estate or trust ~~[shall~~  
2516 ~~be its state taxable]~~ is an amount calculated by:

2517 (1) determining the unadjusted income ~~[as calculated in Section 59-10-201.1;]~~ of the  
2518 nonresident estate or trust for that taxable year after making the adjustments required by:

2519 (a) Section 59-10-202;

2520 (b) Section 59-10-207;

2521 (c) Section 59-10-209.1; or

2522 (d) Section 59-10-210; and

2523 (2) calculating the portion of the amount determined under Subsection (1) that is  
2524 derived from Utah sources determined in accordance with the principles of Section 59-10-117[;  
2525 and adjusted as provided in Section 59-10-207].

2526 Section 44. Section **59-10-205** is amended to read:

2527 **59-10-205. Tax on income derived from Utah sources.**

2528 ~~[A tax]~~ (1) Except as provided in Subsection (2), a tax is imposed on a nonresidential  
2529 estate or trust in an amount equal to the product of:

2530 (a) the nonresident estate's or trust's state taxable income ~~[; as calculated in Section~~  
2531 ~~59-10-204, of every nonresident estate or trust in accordance with the rates prescribed in~~  
2532 ~~Section 59-10-104 for individuals filing separately. The tax shall only be applied to income~~  
2533 ~~derived from Utah sources as adjusted by Section 59-10-207, including such items from~~  
2534 ~~another estate or trust of which the first estate or trust is a beneficiary.]~~ as determined under  
2535 Section 59-10-204; and

2536 (b) the percentage listed in Subsection 59-10-104(2).

2537 (2) The following are not subject to a tax imposed by this part:

2538 (a) a nonresident estate or trust that is not required to file a federal income tax return

2539 for estates and trusts for the taxable year; or

2540 (b) a nonresident trust taxed as a corporation.

2541 Section 45. Section **59-10-207** is amended to read:

2542 **59-10-207. Share of a nonresident estate or trust and beneficiaries in state taxable**  
2543 **income.**

2544 (1) The following shall be determined as provided in this section:

2545 ~~[(1) The]~~(a) the share of a nonresident estate or trust [and its beneficiaries in items] or  
2546 a nonresident beneficiary of a nonresident estate or trust in an item of income, gain, loss, ~~[and]~~  
2547 or deduction [entering into the definition of] that constitutes distributable net income; and ~~[the~~  
2548 share]

2549 (b) for purposes of Section 59-10-116, the share of a nonresident beneficiary of any  
2550 estate or trust in estate or trust income, gain, loss, ~~[and] or~~ deduction ~~[shall be determined as~~  
2551 follows:].

2552 (2) (a) [To] The modifications described in Sections 59-10-202 and 59-10-210 shall be  
2553 added to or subtracted from the amount of ~~[items]~~ an item of income, gain, loss, ~~[and] or~~  
2554 deduction that ~~[enter into the definition of]~~ constitutes distributable net income ~~[there shall be~~  
2555 added or subtracted, as the case may be, the modifications described in Sections 59-10-202 and  
2556 59-10-210] to the extent [they relate to items] the item relates to an item of income, gain, loss,  
2557 ~~[and] or~~ deduction that also ~~[enter into the definition of]~~ constitutes distributable net income.  
2558 ~~[No]~~

2559 (b) A modification [shall] may not be made under this section ~~[that has the effect of~~  
2560 duplicating] if the modification duplicates an item already reflected in ~~[the definition of]~~  
2561 distributable net income.

2562 ~~[(b)]~~ (3) (a) The amount determined under Subsection [(1)] (2)(a) shall be allocated  
2563 among the estate or trust and ~~[its]~~ the beneficiaries ~~[(including solely for the purpose of this~~  
2564 allocation, resident beneficiaries)] of the estate or trust, including a resident beneficiary, in  
2565 proportion to ~~[their respective shares of federal]~~ the estate's, trust's, or beneficiary's share of  
2566 distributable net income. ~~[The amounts so allocated shall have]~~

2567 (b) An amount allocated in accordance with Subsection (3)(a) has the same character

2568 as for federal income tax purposes.

2569 ~~[(c)]~~ (4) (a) If ~~[the]~~ an estate or trust ~~[has no federal]~~ does not have distributable net  
2570 income for the taxable year, the share of each beneficiary in the ~~[net]~~ amount determined under  
2571 Subsection ~~[(1)]~~ (2)(a) shall be in proportion to ~~[his]~~ the beneficiary's share of the estate or trust  
2572 income for ~~[such]~~ that taxable year, under state law or the terms of the governing instrument,  
2573 that is required to be distributed currently and any other amounts of ~~[such]~~ that income  
2574 distributed in ~~[such]~~ that taxable year. ~~[Any]~~

2575 (b) For purposes of this Subsection (4), any balance of ~~[such]~~ net income shall be  
2576 allocated to the estate or trust.

2577 ~~[(2) The]~~ (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative  
2578 Rulemaking Act, the commission may by rule establish ~~[such]~~ one or more other ~~[method or]~~  
2579 methods of determining the ~~[respective]~~ shares of ~~[the beneficiaries]~~ a beneficiary and of ~~[the]~~  
2580 an estate or trust in ~~[its]~~:

2581 (i) income derived from sources in this state~~[-];~~ and ~~[in the]~~

2582 (ii) modifications related ~~[thereto, as may be appropriate and equitable. The]~~ to  
2583 income, gain, loss, or deduction.

2584 (b) A fiduciary may elect to use ~~[any other methods prescribed in]~~ a method allowed by  
2585 this Subsection (5) only ~~[when]~~ if the allocation of ~~[such respective shares]~~ a share under ~~[this~~  
2586 ~~section would result]~~ Subsection (3) or (4):

2587 (i) results in an inequity in the allocation ~~[which];~~ and

2588 (ii) the inequity described in Subsection (5)(b)(i) is substantial ~~[both];~~

2589 (A) in amount; and

2590 (B) in relation to the total amount of the modifications ~~[referred to]~~ described in  
2591 Subsection ~~[(1)]~~ (2)(a).

2592 Section 46. Section **59-10-209.1** is amended to read:

2593 **59-10-209.1. Adjustments to unadjusted income.**

2594 (1) The commission shall allow an adjustment to ~~[state taxable]~~ unadjusted income of a  
2595 resident or nonresident estate or trust if the resident or nonresident estate or trust would  
2596 otherwise:

2597 (a) receive a double tax benefit under this chapter; or

2598 (b) suffer a double tax detriment under this chapter.

2599 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
 2600 commission may make rules to allow for the adjustment to [~~state taxable~~] unadjusted income  
 2601 required by Subsection (1).

2602 Section 47. Section **59-10-210** is amended to read:

2603 **59-10-210. Fiduciary adjustments.**

2604 (1) A share of the fiduciary adjustments described in Subsection (2) shall be added to  
 2605 or subtracted from [~~federal taxable~~] unadjusted income:

2606 (a) of:

2607 (i) a resident or nonresident estate or trust; or

2608 (ii) a resident or nonresident beneficiary of a resident or nonresident estate or trust; and

2609 (b) as provided in this section.

2610 (2) For purposes of Subsection (1), the fiduciary adjustments are the following  
 2611 amounts:

2612 (a) the additions to and subtractions from [~~federal taxable~~] unadjusted income of a  
 2613 resident or nonresident estate or trust required by Section 59-10-202[~~, except for Subsection~~  
 2614 ~~59-10-202(2)(b)~~]; and

2615 (b) a tax credit claimed by a resident or nonresident estate or trust as allowed by:

2616 (i) Section 59-6-102;

2617 (ii) Part 10, Nonrefundable Tax Credit Act;

2618 (iii) Part 11, Refundable Tax Credit Act;

2619 (iv) Section 59-13-202;

2620 (v) Section 63-38f-413; or

2621 (vi) Section 63-38f-503.

2622 (3) (a) The respective shares of an estate or trust and its beneficiaries, including for the  
 2623 purpose of this allocation a nonresident beneficiary, in the state fiduciary adjustments, shall be  
 2624 allocated in proportion to their respective shares of federal distributable net income of the  
 2625 estate or trust.

2626 (b) If the estate or trust described in Subsection (3)(a) has no federal distributable net  
 2627 income for the taxable year, the share of each beneficiary in the fiduciary adjustments shall be  
 2628 allocated in proportion to that beneficiary's share of the estate or trust income for the taxable  
 2629 year that is, under state law or the governing instrument, required to be distributed currently

2630 plus any other amounts of that income distributed in that taxable year.

2631 (c) After making the allocations required by Subsections (3)(a) and (b), any balance of  
2632 the fiduciary adjustments shall be allocated to the estate or trust.

2633 (4) (a) The commission shall allow a fiduciary to use a method for determining the  
2634 allocation of the fiduciary adjustments described in Subsection (2) other than the method  
2635 described in Subsection (3) if using the method described in Subsection (3) results in an  
2636 inequity:

2637 (i) in allocating the fiduciary adjustments described in Subsection (2); and

2638 (ii) if the inequity is substantial:

2639 (A) in amount; and

2640 (B) in relation to the total amount of the fiduciary adjustments described in Subsection  
2641 (2).

2642 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
2643 commission may make rules authorizing a fiduciary to use a method for determining the  
2644 allocation of the fiduciary adjustments described in Subsection (2) other than the method  
2645 described in Subsection (3) if using the method described in Subsection (3) results in an  
2646 inequity:

2647 (i) in allocating the fiduciary adjustments described in Subsection (2); and

2648 (ii) if the inequity is substantial:

2649 (A) in amount; and

2650 (B) in relation to the total amount of the fiduciary adjustments described in Subsection  
2651 (2).

2652 Section 48. Section **59-10-507** is amended to read:

2653 **59-10-507. Return by a pass-through entity.**

2654 (1) [~~For purposes of~~] As used in this section[~~,"taxable"]:~~

2655 (a) "Pass-through entity" is as defined in Section 59-10-1402.

2656 (b) "Taxable year" means a year or other time period that would be a taxable year of a  
2657 [partnership if the partnership] pass-through entity if the pass-through entity were subject to  
2658 taxation under this chapter.

2659 (2) A [~~partnership~~] pass-through entity having any income derived from sources in this  
2660 state shall make a return for the taxable year as prescribed by the commission.

2661 (3) For purposes of Subsection (2), a [~~partnership's~~] pass-through entity's income  
2662 derived from sources in this state shall be determined in accordance with [~~Section 59-10-303~~]  
2663 the principles of Section 59-10-1405.

2664 Section 49. Section **59-10-1002.1**, which is renumbered from Section 59-10-1016 is  
2665 renumbered and amended to read:

2666 ~~[59-10-1016].~~ **59-10-1002.1. Removal of tax credit from tax return and**  
2667 **prohibition on claiming or carrying forward a tax credit -- Conditions for removal and**  
2668 **prohibition on claiming or carrying forward a tax credit -- Commission reporting**  
2669 **requirements.**

2670 (1) As used in this section, "tax return" means a tax return filed in accordance with this  
2671 chapter.

2672 (2) Beginning two taxable years after the requirements of Subsection (3) are met:

2673 (a) the commission shall remove a tax credit allowed under this part from each tax  
2674 return on which the tax credit appears; and

2675 (b) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax  
2676 credit.

2677 (3) The commission shall remove a tax credit allowed under this part from a tax return  
2678 and a claimant, estate, or trust filing a tax return may not claim or carry forward [a] the tax  
2679 credit as provided in Subsection (2) if:

2680 (a) the total amount of the tax credit claimed or carried forward by all claimants,  
2681 estates, or trusts filing tax returns is less than \$10,000 per year for three consecutive taxable  
2682 years beginning on or after January 1, 2002; and

2683 (b) less than ten claimants, estates, and trusts per year for the three consecutive taxable  
2684 years described in Subsection (3)(a), file a tax return claiming or carrying forward the tax  
2685 credit.

2686 (4) The commission shall, on or before the November interim meeting of the year after  
2687 the taxable year in which the requirements of Subsection (3) are met:

2688 (a) report to the Revenue and Taxation Interim Committee that in accordance with this  
2689 section:

2690 (i) the commission is required to remove a tax credit from each tax return on which the  
2691 tax credit appears; and

2692 (ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax  
2693 credit; and

2694 (b) notify each state agency required by statute to assist in the administration of the tax  
2695 credit that in accordance with this section:

2696 (i) the commission is required to remove a tax credit from each tax return on which the  
2697 tax credit appears; and

2698 (ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax  
2699 credit.

2700 Section 50. Section **59-10-1002.2**, which is renumbered from Section 59-10-1206.9 is  
2701 renumbered and amended to read:

2702 ~~[59-10-1206.9]~~. **59-10-1002.2. Apportionment of tax credits.**

2703 (1) A nonresident individual or a part-year resident individual that claims a tax credit  
2704 in accordance with Section ~~[59-10-1206.1, 59-10-1206.2, or 59-10-1206.3]~~ 59-10-1017,  
2705 59-10-1018, 59-10-1019, 59-10-1021, 59-10-1022, 59-10-1023, or 59-10-1024, may only claim  
2706 an apportioned amount of the tax credit equal to:

2707 ~~[(+)]~~ (a) for a nonresident individual, the product of:

2708 ~~[(a)]~~ (i) the state income tax percentage for the nonresident individual; and

2709 ~~[(b)]~~ (ii) the amount of the tax credit that the nonresident individual would have been  
2710 allowed to claim but for the apportionment requirements of this section; or

2711 ~~[(2)]~~ (b) for a part-year resident individual, the product of:

2712 ~~[(a)]~~ (i) the state income tax percentage for the part-year resident individual; and

2713 ~~[(b)]~~ (ii) the amount of the tax credit that the part-year resident individual would have  
2714 been allowed to claim but for the apportionment requirements of this section.

2715 (2) A nonresident estate or trust that claims a tax credit in accordance with Section  
2716 59-10-1017, 59-10-1020, 59-10-1022, or 59-10-1024, may only claim an apportioned amount  
2717 of the tax credit equal to the product of:

2718 (a) the state income tax percentage for the nonresident estate or trust; and

2719 (b) the amount of the tax credit that the nonresident estate or trust would have been  
2720 allowed to claim but for the apportionment requirements of this section.

2721 Section 51. Section **59-10-1014** is amended to read:

2722 **59-10-1014. Renewable energy systems tax credit -- Definitions -- Limitations --**

2723 **State tax credit in addition to allowable federal credits -- Certification -- Rulemaking**  
2724 **authority.**

2725 (1) As used in this part:

2726 (a) "Active solar system":

2727 (i) means a system of equipment capable of collecting and converting incident solar  
2728 radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy  
2729 by a separate apparatus to storage or to the point of use; and

2730 (ii) includes water heating, space heating or cooling, and electrical or mechanical  
2731 energy generation.

2732 (b) "Biomass system" means any system of apparatus and equipment for use in  
2733 converting material into biomass energy, as defined in Section 59-12-102, and transporting that  
2734 energy by separate apparatus to the point of use or storage.

2735 (c) "Business entity" means any entity under which business is conducted or transacted.

2736 (d) "Direct-use geothermal system" means a system of apparatus and equipment  
2737 enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit,  
2738 that is contained in the earth to meet energy needs, including heating a building, an industrial  
2739 process, and aquaculture.

2740 (e) "Geothermal electricity" means energy contained in heat that continuously flows  
2741 outward from the earth that is used as a sole source of energy to produce electricity.

2742 (f) "Geothermal heat-pump system" means a system of apparatus and equipment  
2743 enabling the use of thermal properties contained in the earth at temperatures well below 100  
2744 degrees Fahrenheit to help meet heating and cooling needs of a structure.

2745 (g) "Hydroenergy system" means a system of apparatus and equipment capable of  
2746 intercepting and converting kinetic water energy into electrical or mechanical energy and  
2747 transferring this form of energy by separate apparatus to the point of use or storage.

2748 (h) "Passive solar system":

2749 (i) means a direct thermal system that utilizes the structure of a building and its  
2750 operable components to provide for collection, storage, and distribution of heating or cooling  
2751 during the appropriate times of the year by utilizing the climate resources available at the site;  
2752 and

2753 (ii) includes those portions and components of a building that are expressly designed

2754 and required for the collection, storage, and distribution of solar energy.

2755 (i) "Residential energy system" means any active solar, passive solar, biomass,  
2756 direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system used to  
2757 supply energy to or for any residential unit.

2758 (j) "Residential unit" means any house, condominium, apartment, or similar dwelling  
2759 unit that serves as a dwelling for a person, group of persons, or a family but does not include  
2760 property subject to a fee under:

2761 (i) Section 59-2-404;

2762 (ii) Section 59-2-405;

2763 (iii) Section 59-2-405.1;

2764 (iv) Section 59-2-405.2; or

2765 (v) Section 59-2-405.3.

2766 (k) "Utah Geological Survey" means the Utah Geological Survey established in Section  
2767 63-73-5.

2768 (l) "Wind system" means a system of apparatus and equipment capable of intercepting  
2769 and converting wind energy into mechanical or electrical energy and transferring these forms of  
2770 energy by a separate apparatus to the point of use or storage.

2771 (2) For taxable years beginning on or after January 1, 2007, a claimant, estate, or trust  
2772 may claim a nonrefundable tax credit as provided in this section if:

2773 (a) a claimant, estate, or trust that is not a business entity purchases and completes or  
2774 participates in the financing of a residential energy system to supply all or part of the energy for  
2775 the claimant's, estate's, or trust's residential unit in the state; or

2776 (b) (i) a claimant, estate, or trust that is a business entity sells a residential unit to  
2777 another claimant, estate, or trust that is not a business entity before making a claim for a tax  
2778 credit under Subsection (6) or Section 59-7-614; and

2779 (ii) the claimant, estate, or trust that is a business entity assigns its right to the tax credit  
2780 to the claimant, estate, or trust that is not a business entity as provided in Subsection (6)(c) or  
2781 Subsection 59-7-614(2)(a)(iii).

2782 (3) (a) The tax credit described in Subsection (2) is equal to 25% of the reasonable  
2783 costs of each residential energy system, including installation costs, against any income tax  
2784 liability of the claimant, estate, or trust under this chapter for the taxable year in which the

2785 residential energy system is completed and placed in service.

2786 (b) The total amount of each tax credit under this section may not exceed \$2,000 per  
2787 residential unit.

2788 (c) The tax credit under this section is allowed for any residential energy system  
2789 completed and placed in service on or after January 1, 2007.

2790 (4) (a) The tax credit provided for in this section shall be claimed in the return for the  
2791 taxable year in which the residential energy system is completed and placed in service.

2792 (b) Additional residential energy systems or parts of residential energy systems may be  
2793 similarly claimed in returns for subsequent taxable years as long as the total amount claimed  
2794 does not exceed \$2,000 per residential unit.

2795 (c) If the amount of the tax credit under this section exceeds the income tax liability of  
2796 the claimant, estate, or trust claiming the tax credit under this section for that taxable year, then  
2797 the amount not used may be carried over for a period that does not exceed the next four taxable  
2798 years.

2799 (5) (a) A claimant, estate, or trust that is not a business entity that leases a residential  
2800 energy system installed on a residential unit is eligible for the residential energy tax credit if  
2801 that claimant, estate, or trust confirms that the lessor irrevocably elects not to claim the tax  
2802 credit.

2803 (b) Only the principal recovery portion of the lease payments, which is the cost  
2804 incurred by the claimant, estate, or trust in acquiring the residential energy system excluding  
2805 interest charges and maintenance expenses, is eligible for the tax credits.

2806 (c) A claimant, estate, or trust described in this Subsection (5) may use the tax credits  
2807 for a period that does not exceed seven years from the initiation of the lease.

2808 (6) (a) A claimant, estate, or trust that is a business entity that purchases and completes  
2809 or participates in the financing of a residential energy system to supply all or part of the energy  
2810 required for a residential unit owned or used by the claimant, estate, or trust that is a business  
2811 entity and situated in Utah is entitled to a nonrefundable tax credit as provided in this  
2812 Subsection (6).

2813 (b) (i) For taxable years beginning on or after January 1, 2007, a claimant, estate, or  
2814 trust that is a business entity is entitled to a nonrefundable tax credit equal to 25% of the  
2815 reasonable costs of a residential energy system installed with respect to each residential unit it

2816 owns or uses, including installation costs, against any tax due under this chapter for the taxable  
2817 year in which the energy system is completed and placed in service.

2818 (ii) The total amount of the tax credit under this Subsection (6) may not exceed \$2,000  
2819 per residential unit.

2820 (iii) The tax credit under this Subsection (6) is allowed for any residential energy  
2821 system completed and placed in service on or after January 1, 2007.

2822 (c) If a claimant, estate, or trust that is a business entity sells a residential unit to a  
2823 claimant, estate, or trust that is not a business entity before making a claim for the tax credit  
2824 under this Subsection (6), the claimant, estate, or trust that is a business entity may:

2825 (i) assign its right to this tax credit to the claimant, estate, or trust that is not a business  
2826 entity; and

2827 (ii) if the claimant, estate, or trust that is a business entity assigns its right to the tax  
2828 credit to a claimant, estate, or trust that is not a business entity under Subsection (6)(c)(i), the  
2829 claimant, estate, or trust that is not a business entity may claim the tax credit as if that claimant,  
2830 estate, or trust that is not a business entity had completed or participated in the costs of the  
2831 residential energy system under this section.

2832 (7) (a) A tax credit under this section may be claimed for the taxable year in which the  
2833 residential energy system is completed and placed in service.

2834 (b) Additional residential energy systems or parts of residential energy systems may be  
2835 claimed for subsequent years.

2836 (c) If the amount of a tax credit under this section exceeds the tax liability of the  
2837 claimant, estate, or trust claiming the tax credit under this section for a taxable year, the amount  
2838 of the tax credit exceeding the tax liability may be carried over for a period which does not  
2839 exceed the next four taxable years.

2840 (8) (a) [The] Except as provided in Subsection (8)(b), tax credits provided for under  
2841 this section are in addition to any tax credits provided under the laws or rules and regulations of  
2842 the United States.

2843 (b) A purchaser of one or more solar units that claims a tax credit under Section  
2844 59-10-1024 for the purchase of the one or more solar units may not claim a tax credit under this  
2845 section for that purchase.

2846 (9) (a) The Utah Geological Survey may set standards for residential energy systems

2847 that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to  
 2848 ensure that the systems eligible for the tax credit use the state's renewable and nonrenewable  
 2849 energy resources in an appropriate and economic manner.

2850 (b) The Utah Geological Survey may set standards for residential and commercial  
 2851 energy systems that establish the reasonable costs of an energy system, as used in Subsections  
 2852 (3)(a) and (6)(b)(i), as an amount per unit of energy production.

2853 (c) A tax credit may not be taken under this section until the Utah Geological Survey  
 2854 has certified that the energy system has been completely installed and is a viable system for  
 2855 saving or production of energy from renewable resources.

2856 (10) The Utah Geological Survey and the commission may make rules in accordance  
 2857 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are necessary to  
 2858 implement this section.

2859 (11) (a) On or before October 1, 2012, and every five years thereafter, the Utah Tax  
 2860 Review Commission shall review each tax credit provided by this section and make  
 2861 recommendations to the Revenue and Taxation Interim Committee concerning whether the  
 2862 credit should be continued, modified, or repealed.

2863 (b) The Utah Tax Review Commission's report under Subsection (11)(a) shall include  
 2864 information concerning the cost of the credit, the purpose and effectiveness of the credit, and  
 2865 the state's benefit from the credit.

2866 Section 52. Section **59-10-1017**, which is renumbered from Section 59-10-1206.1 is  
 2867 renumbered and amended to read:

2868 ~~[59-10-1206.1].~~ **59-10-1017. Utah Educational Savings Plan tax credit.**

2869 (1) As used in this section:

2870 (a) "Account owner" is as defined in Section 53B-8a-102.

2871 ~~[(b) "Claimant" means a resident or nonresident individual that has state taxable  
 2872 income under this part.]~~

2873 ~~[(c)]~~ (b) "Higher education costs" is as defined in Section 53B-8a-102.

2874 ~~[(d)]~~ (c) "Maximum amount of a qualified investment for the taxable year" means, for  
 2875 a taxable year:

2876 (i) for a claimant, estate, or trust that is an account owner, if that claimant, estate, or  
 2877 trust is ~~[a person]~~ other than husband and wife account owners who file a single return jointly,

2878 the maximum amount of a qualified investment:

2879 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

2880 (B) increased or decreased for that taxable year in accordance with Subsection

2881 53B-8a-106(1)(f); or

2882 (ii) for claimants who are husband and wife account owners who file a single return

2883 jointly, the maximum amount of a qualified investment:

2884 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

2885 (B) increased or decreased for that taxable year in accordance with Subsection

2886 53B-8a-106(1)(f).

2887 ~~[(e)]~~ (d) "Qualified investment" is as defined in Section 53B-8a-102.

2888 (2) ~~[For taxable years beginning on or after January 1, 2007, a]~~ Except as provided in

2889 Section 59-10-1002.2, a claimant, estate, or trust that is an account owner may claim a

2890 nonrefundable tax credit equal to the product of:

2891 (a) the lesser of:

2892 (i) the amount of a qualified investment the claimant, estate, or trust:

2893 (A) makes during the taxable year; and

2894 (B) does not deduct;

2895 (I) for a claimant, on the claimant's federal individual income tax return; or

2896 (II) for an estate or trust, on the estate's or trust's federal income tax return; or

2897 (ii) the maximum amount of a qualified investment for the taxable year if the amount

2898 described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified investment

2899 for the taxable year; and

2900 ~~[(b) (i) for the taxable year beginning on or after January 1, 2007, but beginning on or~~

2901 ~~before December 31, 2007, 5.35%; or]~~

2902 ~~[(ii) for taxable years beginning on or after January 1, 2008, 5%.]~~

2903 (b) 5%.

2904 (3) A tax credit under this section may not be carried forward or carried back.

2905 Section 53. Section **59-10-1018**, which is renumbered from Section 59-10-1206.2 is

2906 renumbered and amended to read:

2907 ~~[59-10-1206.2].~~ **59-10-1018. Definitions -- Nonrefundable taxpayer tax**

2908 **credits.**

2909 (1) As used in this section:

2910 [~~(a)~~ "Claimant" means a resident or nonresident individual that has state taxable  
2911 income under this part.]

2912 [~~(b)~~] (a) "Head of household filing status" means a head of household, as defined in  
2913 Section 2(b), Internal Revenue Code, who files a single federal individual income tax return for  
2914 the taxable year.

2915 [~~(c)~~] (b) "Joint filing status" means:

2916 (i) a husband and wife who file a single return jointly under this chapter for a taxable  
2917 year; or

2918 (ii) a surviving spouse, as defined in Section 2(a), Internal Revenue Code, who files a  
2919 single federal individual income tax return for the taxable year.

2920 [~~(d)~~] (c) "Single filing status" means:

2921 (i) a single individual who files a single federal individual income tax return for the  
2922 taxable year; or

2923 (ii) a married individual who:

2924 (A) does not file a single federal individual income tax return jointly with that married  
2925 individual's spouse for the taxable year; and

2926 (B) files a single federal individual income tax return for the taxable year.

2927 (2) Except as provided in Section [~~59-10-1206.9~~] 59-10-1002.2, and subject to  
2928 Subsections (3) through (5), [~~for taxable years beginning on or after January 1, 2008,~~] a  
2929 claimant may claim a nonrefundable tax credit against taxes otherwise due under this part equal  
2930 to the sum of:

2931 (a) (i) for a claimant that deducts the standard deduction on the claimant's federal  
2932 individual income tax return for the taxable year, 6% of the amount the claimant deducts as  
2933 allowed as the standard deduction on the claimant's federal individual income tax return for  
2934 that taxable year; or

2935 (ii) for a claimant that itemizes deductions on the claimant's federal individual income  
2936 tax return for the taxable year, the product of:

2937 (A) the difference between:

2938 (I) the amount the claimant deducts as allowed as an itemized deduction on the  
2939 claimant's federal individual income tax return for that taxable year; and

2940 (II) any amount of state or local income taxes the claimant deducts as allowed as an  
2941 itemized deduction on the claimant's federal individual income tax return for that taxable year;  
2942 and

2943 (B) 6%; and

2944 (b) ~~6%~~ the product of:

2945 (i) 75% of the total amount the claimant [~~would have been allowed to claim~~] deducts  
2946 as allowed as a personal exemption deduction on the claimant's [~~state~~] federal individual  
2947 income tax return [~~had the claimant filed an individual income tax return under Part 1,~~  
2948 ~~Determination and Reporting of Tax Liability and Information, for the taxable year~~] for that  
2949 taxable year; and

2950 (ii) 6%.

2951 (3) A claimant may not carry forward or carry back a tax credit under this section.

2952 (4) The tax credit allowed by Subsection (2) shall be reduced by \$.013 for each dollar  
2953 by which a claimant's state taxable income exceeds:

2954 (a) for a claimant who has a single filing status, \$12,000;

2955 (b) for a claimant who has a head of household filing status, \$18,000; or

2956 (c) for a claimant who has a joint filing status, \$24,000.

2957 (5) (a) For taxable years beginning on or after January 1, 2009, the commission shall  
2958 increase or decrease the following dollar amounts by a percentage equal to the percentage  
2959 difference between the consumer price index for the preceding calendar year and the consumer  
2960 price index for calendar year 2007:

2961 (i) the dollar amount listed in Subsection (4)(a); and

2962 (ii) the dollar amount listed in Subsection (4)(b).

2963 (b) After the commission increases or decreases the dollar amounts listed in Subsection  
2964 (5)(a), the commission shall round those dollar amounts listed in Subsection (5)(a) to the  
2965 nearest whole dollar.

2966 (c) After the commission rounds the dollar amounts as required by Subsection (5)(b),  
2967 the commission shall increase or decrease the dollar amount listed in Subsection (4)(c) so that  
2968 the dollar amount listed in Subsection (4)(c) is equal to the product of:

2969 (i) the dollar amount listed in Subsection (4)(a); and

2970 (ii) two.

2971 (d) For purposes of Subsection (5)(a), the commission shall calculate the consumer  
 2972 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

2973 Section 54. Section **59-10-1019**, which is renumbered from Section 59-10-1206.3 is  
 2974 renumbered and amended to read:

2975 ~~[59-10-1206.3].~~ **59-10-1019. Definitions -- Nonrefundable retirement tax**  
 2976 **credits.**

2977 (1) As used in this section:

2978 (a) "Eligible age 65 or older retiree" means a [~~resident or nonresident individual~~]  
 2979 claimant, regardless of whether that [~~individual~~] claimant is retired, who:

2980 (i) is 65 years of age or older; and

2981 (ii) was born on or before December 31, 1952[~~;~~ and].

2982 [~~(iii) has state taxable income under this part.~~]

2983 (b) (i) "Eligible retirement income" means income received by an eligible under age 65  
 2984 retiree as a pension or annuity if that pension or annuity is:

2985 (A) paid to the eligible under age 65 retiree or the surviving spouse of an eligible under  
 2986 age 65 retiree; and

2987 (B) (I) paid from an annuity contract purchased by an employer under a plan that meets  
 2988 the requirements of Section 404(a)(2), Internal Revenue Code;

2989 (II) purchased by an employee under a plan that meets the requirements of Section 408,  
 2990 Internal Revenue Code; or

2991 (III) paid by:

2992 (Aa) the United States;

2993 (Bb) a state or a political subdivision of a state; or

2994 (Cc) the District of Columbia.

2995 (ii) "Eligible retirement income" does not include amounts received by the spouse of a  
 2996 living eligible under age 65 retiree because of the eligible under age 65 retiree's having been  
 2997 employed in a community property state.

2998 (c) "Eligible under age 65 retiree" means a [~~resident or nonresident individual~~]  
 2999 claimant, regardless of whether that [~~individual~~] claimant is retired, who:

3000 (i) is younger than 65 years of age;

3001 (ii) was born on or before December 31, 1952; and

3002 (iii) has eligible retirement income for the taxable year for which a tax credit is claimed  
3003 under this section~~[-and]~~.

3004 ~~[(iv) has state taxable income under this part.]~~

3005 (d) "Head of household filing status" is as defined in Section ~~[59-10-1206.2]~~  
3006 59-10-1018.

3007 (e) "Joint filing status" is as defined in Section ~~[59-10-1206.2]~~ 59-10-1018.

3008 (f) "Married filing separately status" means a married individual who:

3009 (i) does not file a single federal individual income tax return jointly with that married  
3010 individual's spouse for the taxable year; and

3011 (ii) files a single federal individual income tax return for the taxable year.

3012 (g) "Modified adjusted gross income" means the sum of an eligible age 65 or older  
3013 retiree's or eligible under age 65 retiree's:

3014 (i) adjusted gross income for the taxable year for which a tax credit is claimed under  
3015 this section; ~~[and]~~

3016 (ii) any interest income that is not included in adjusted gross income for the taxable  
3017 year described in Subsection (1)(g)(i)~~[-]; and~~

3018 (iii) any addition to adjusted gross income required by Section 59-10-114 for the  
3019 taxable year described in Subsection (1)(g)(i).

3020 (h) "Single filing status" means a single individual who files a single federal individual  
3021 income tax return for the taxable year.

3022 (2) Except as provided in Section ~~[59-10-1206.9]~~ 59-10-1002.2 and subject to  
3023 Subsections (3) through (6)~~[-for taxable years beginning on or after January 1, 2008]:~~

3024 (a) each eligible age 65 or older retiree may claim a nonrefundable tax credit of \$450  
3025 against taxes otherwise due under this part; or

3026 (b) each eligible under age 65 retiree may claim a nonrefundable tax credit against  
3027 taxes otherwise due under this part in an amount equal to the lesser of:

3028 (i) \$288; or

3029 (ii) the product of:

3030 (A) the eligible under age 65 retiree's eligible retirement income for the taxable year for  
3031 which the eligible under age 65 retiree claims a tax credit under this section; and

3032 (B) 6%.

3033 (3) A tax credit under this section may not be carried forward or carried back.

3034 (4) The sum of the tax credits allowed by Subsection (2)~~(a)~~ claimed on one return  
3035 filed under this part shall be reduced by \$.025 for each dollar by which ~~[an eligible age 65 or~~  
3036 ~~older retiree's]~~ modified adjusted gross income for purposes of the return exceeds:

3037 (a) for ~~[an eligible age 65 or older retiree who has]~~ a federal individual income tax  
3038 return that is allowed a married filing separately status, \$16,000;

3039 (b) for ~~[an eligible age 65 or older retiree who has]~~ a federal individual income tax  
3040 return that is allowed a single filing status, \$25,000; ~~[or]~~

3041 (c) for ~~[an eligible age 65 or older retiree who has]~~ a federal individual income tax  
3042 return that is allowed a head of household filing status ~~[or a joint filing status]~~, \$32,000~~[-]; or~~

3043 (d) for a return under this chapter that is allowed a joint filing status, \$32,000.

3044 ~~[(5) The sum of the tax credits allowed by Subsection (2)(b) claimed on one return~~  
3045 ~~filed under this part shall be reduced by \$.025 for each dollar by which an eligible under age 65~~  
3046 ~~retiree's modified adjusted gross income exceeds:]~~

3047 ~~[(a) for an eligible under age 65 retiree who has a married filing separately status,~~  
3048 ~~\$16,000;]~~

3049 ~~[(b) for an eligible under age 65 retiree who has a single filing status, \$25,000; or]~~

3050 ~~[(c) for an eligible under age 65 retiree who has a head of household filing status or a~~  
3051 ~~joint filing status, \$32,000.]~~

3052 ~~[(6)]~~ (5) For purposes of determining the ownership of items of retirement income  
3053 under this section, common law doctrine shall be applied in all cases even though some items  
3054 of retirement income may have originated from service or investments in a community property  
3055 state.

3056 Section 55. Section **59-10-1020** is enacted to read:

3057 **59-10-1020. Nonrefundable estate or trust tax credit.**

3058 (1) For taxable years beginning on or after January 1, 2008, an estate or trust may claim  
3059 a nonrefundable tax credit against taxes otherwise due under Part 2, Trusts and Estates, equal  
3060 to the product of:

3061 (a) the sum of:

3062 (i) the amount that a resident or nonresident estate or trust deducts under Section 163,  
3063 Internal Revenue Code, for interest paid or accrued, as allowed on the resident or nonresident

3064 estate's or trust's federal income tax return for estates and trusts for the taxable year;  
3065 (ii) the amount that a resident or nonresident estate or trust deducts under Section 164,  
3066 Internal Revenue Code, for taxes paid or accrued other than for any amount paid or accrued for  
3067 state or local income taxes for the taxable year, as allowed on the resident or nonresident  
3068 estate's or trust's federal income tax return for estates and trusts for the taxable year;  
3069 (iii) the amount that a resident or nonresident estate or trust other than a qualified  
3070 nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a  
3071 charitable contribution deduction, as allowed on the resident or nonresident estate's or trust's  
3072 federal income tax return for estates and trusts for the taxable year;  
3073 (iv) subject to Subsection (3), the amount that a resident or nonresident estate or trust  
3074 deducts as an attorney, accountant, or return preparer fee, as allowed on the resident or  
3075 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable  
3076 year; and  
3077 (v) subject to Subsection (3), the amount that a resident or nonresident estate or trust  
3078 deducts as an other deduction or miscellaneous itemized deduction, as allowed on the resident  
3079 or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable  
3080 year; and  
3081 (b) 6%.  
3082 (2) An estate or trust may not carry forward or carry back a tax credit under this  
3083 section.  
3084 (3) The tax credit allowed by Subsection (1) shall be reduced by \$.013 for each dollar  
3085 by which an estate's or trust's taxable income exceeds \$12,000.  
3086 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:  
3087 (a) for purposes of Subsection (1)(a)(iv), the commission may make rules for  
3088 determining what constitutes an attorney, accountant, or return preparer fee if that attorney,  
3089 accountant, or return preparer fee is consistent with an attorney, accountant, or return preparer  
3090 fee that may be deducted on a federal income tax return for estates and trusts; or  
3091 (b) for purposes of Subsection (1)(a)(v), the commission may make rules for  
3092 determining what constitutes an other deduction or miscellaneous itemized deduction if that  
3093 other deduction or miscellaneous itemized deduction is consistent with an other deduction or  
3094 miscellaneous itemized deduction that may be deducted on a federal income tax return for

3095 estates and trusts.

3096 Section 56. Section **59-10-1021** is enacted to read:

3097 **59-10-1021. Nonrefundable medical care savings account tax credit.**

3098 (1) As used in this section:

3099 (a) "Account administrator" is as defined in Section 31A-32a-102.

3100 (b) "Account holder" is as defined in Section 31A-32a-102.

3101 (c) "Eligible medical expense" is as defined in Section 31A-32a-102.

3102 (d) "Eligible spouse claimants" means claimants who are spouses if:

3103 (i) the claimants file a single return jointly as husband and wife;

3104 (ii) neither spouse is covered by:

3105 (A) health care insurance as defined in Section 31A-1-301; or

3106 (B) a self-funded plan that covers the other spouse; and

3107 (iii) each spouse is an account holder.

3108 (e) "Medical care savings account" is as defined in Section 31A-32a-102.

3109 (2) Except as provided in Section 59-10-1002.2 and subject to Subsections (3) and (4),

3110 for taxable years beginning on or after January 1, 2008, a claimant may claim a nonrefundable

3111 tax credit for:

3112 (a) a contribution:

3113 (i) made during the taxable year;

3114 (ii) made to a medical care savings account in accordance with Title 31A, Chapter 32a,

3115 Medical Care Savings Account Act;

3116 (iii) that is accepted by the account administrator; and

3117 (iv) that the claimant does not deduct on the claimant's federal individual income tax

3118 return under Section 220, Internal Revenue Code; and

3119 (b) interest on the contribution described in Subsection (2)(a).

3120 (3) (a) For eligible spouse claimants, a tax credit under this section is equal to the

3121 product of:

3122 (i) the greater of:

3123 (A) the sum of:

3124 (I) the amount contributed in accordance with Title 31A, Chapter 32a, Medical Care

3125 Savings Account Act, by or on behalf of the husband, not to exceed the amount described in

3126 Subsection 31A-32a-103(2)(a)(i); and  
3127 (II) the amount contributed in accordance with Title 31A, Chapter 32a, Medical Care  
3128 Savings Account Act, by or on behalf of the wife, not to exceed the amount described in  
3129 Subsection 31A-32a-103(2)(a)(i); or  
3130 (B) an amount equal to the sum of all eligible medical expenses paid by the eligible  
3131 spouse claimants on behalf of:  
3132 (I) the husband;  
3133 (II) the wife; or  
3134 (III) a dependent of the:  
3135 (Aa) husband; or  
3136 (Bb) wife; and  
3137 (ii) 5%.  
3138 (b) For a claimant other than eligible spouse claimants, a tax credit under this section is  
3139 equal to the product of:  
3140 (i) the greater of:  
3141 (A) the amount contributed by or on behalf of the claimant, not to exceed the amount  
3142 described in Subsection 31A-32a-103(2)(a)(i); or  
3143 (B) an amount equal to the sum of all eligible medical expenses paid by the claimant  
3144 on behalf of:  
3145 (I) the claimant;  
3146 (II) the claimant's spouse; or  
3147 (III) a dependent of the claimant; and  
3148 (ii) 5%.  
3149 (4) A tax credit under this section may not be carried forward or carried back.  
3150 Section 57. Section **59-10-1022** is enacted to read:  
3151 **59-10-1022. Nonrefundable tax credit for capital gain transactions.**  
3152 (1) As used in this section:  
3153 (a) (i) "Capital gain transaction" means a transaction that results in a:  
3154 (A) short-term capital gain; or  
3155 (B) long-term capital gain.  
3156 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

3157 the commission may by rule define the term "transaction."  
3158 (b) "Commercial domicile" means the principal place from which the trade or business  
3159 of a Utah small business corporation is directed or managed.  
3160 (c) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.  
3161 (d) "Qualifying stock" means stock that is:  
3162 (i) (A) common; or  
3163 (B) preferred;  
3164 (ii) as defined by the commission by rule made in accordance with Title 63, Chapter  
3165 46a, Utah Administrative Rulemaking Act, originally issued to:  
3166 (A) a claimant, estate, or trust; or  
3167 (B) a partnership if the claimant, estate, or trust that claims a tax credit under this  
3168 section:  
3169 (I) was a partner on the day on which the stock was issued; and  
3170 (II) remains a partner until the last day of the taxable year for which the claimant,  
3171 estate, or trust claims a tax credit under this section; and  
3172 (iii) issued:  
3173 (A) by a Utah small business corporation;  
3174 (B) on or after January 1, 2008; and  
3175 (C) for:  
3176 (I) money; or  
3177 (II) other property, except for stock or securities.  
3178 (e) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.  
3179 (f) (i) "Utah small business corporation" means a corporation that:  
3180 (A) except as provided in Subsection (1)(f)(ii), is a small business corporation as  
3181 defined in Section 1244(c)(3), Internal Revenue Code;  
3182 (B) except as provided in Subsection (1)(f)(iii), meets the requirements of Section  
3183 1244(c)(1)(C), Internal Revenue Code; and  
3184 (C) has its commercial domicile in this state.  
3185 (ii) The dollar amount listed in Section 1244(c)(3)(A) is considered to be \$2,500,000.  
3186 (iii) The phrase "the date the loss on such stock was sustained" in Sections  
3187 1244(c)(1)(C) and 1244(c)(2), Internal Revenue Code, is considered to be "the last day of the

3188 taxable year for which the claimant, estate, or trust claims a tax credit under this section."

3189 (2) For taxable years beginning on or after January 1, 2008, a claimant, estate, or trust  
3190 that meets the requirements of Subsection (3) may claim a nonrefundable tax credit equal to the  
3191 product of:

3192 (a) the total amount of the claimant's, estate's, or trust's short-term capital gain or  
3193 long-term capital gain on a capital gain transaction that occurs on or after January 1, 2008; and

3194 (b) 5%.

3195 (3) For purposes of Subsection (2), a claimant, estate, or trust may claim the  
3196 nonrefundable tax credit allowed by Subsection (2) if:

3197 (a) 70% or more of the gross proceeds of the capital gain transaction are expended:

3198 (i) to purchase qualifying stock in a Utah small business corporation; and

3199 (ii) within a 12-month period after the day on which the capital gain transaction occurs;

3200 and

3201 (b) prior to the purchase of the qualifying stock described in Subsection (3)(a)(i), the  
3202 claimant, estate, or trust did not have an ownership interest in the Utah small business  
3203 corporation that issued the qualifying stock.

3204 (4) A claimant, estate, or trust may not carry forward or carry back a tax credit under  
3205 this section.

3206 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
3207 commission may make rules:

3208 (a) defining the term "gross proceeds"; and

3209 (b) prescribing the circumstances under which a claimant, estate, or trust has an  
3210 ownership interest in a Utah small business corporation.

3211 Section 58. Section **59-10-1023** is enacted to read:

3212 **59-10-1023. Nonrefundable tax credit for amounts paid under a health benefit**  
3213 **plan.**

3214 (1) As used in this section:

3215 (a) "Claimant with dependents" means a claimant:

3216 (i) regardless of the claimant's filing status for purposes of filing a federal individual  
3217 income tax return for the taxable year; and

3218 (ii) who claims one or more dependents under Section 151, Internal Revenue Code, as

3219 allowed on the claimant's federal individual income tax return for the taxable year.

3220 (b) "Eligible insured individual" means:

3221 (i) the claimant who is insured under a health benefit plan;

3222 (ii) the spouse of the claimant described in Subsection (1)(b)(i) if:

3223 (A) the claimant files a single return jointly under this chapter with the claimant's

3224 spouse for the taxable year; and

3225 (B) the spouse is insured under the health benefit plan described in Subsection

3226 (1)(b)(i); or

3227 (iii) a dependent of the claimant described in Subsection (1)(b)(i) if:

3228 (A) the claimant claims the dependent under Section 151, Internal Revenue Code, as

3229 allowed on the claimant's federal individual income tax return for the taxable year; and

3230 (B) the dependent is insured under the health benefit plan described in Subsection

3231 (1)(b)(i).

3232 (c) "Excluded expenses" means an amount a claimant pays for insurance offered under

3233 a health benefit plan for a taxable year if:

3234 (i) the claimant claims a tax credit for that amount under Section 35, Internal Revenue

3235 Code:

3236 (A) on the claimant's federal individual income tax return for the taxable year; and

3237 (B) with respect to an eligible insured individual;

3238 (ii) the claimant deducts that amount under Section 162 or 213, Internal Revenue

3239 Code:

3240 (A) on the claimant's federal individual income tax return for the taxable year; and

3241 (B) with respect to an eligible insured individual; or

3242 (iii) the claimant excludes that amount from gross income under Section 106 or 125,

3243 Internal Revenue Code, with respect to an eligible insured individual.

3244 (d) (i) "Health benefit plan" is as defined in Section 31A-1-301.

3245 (ii) "Health benefit plan" does not include equivalent self-insurance as defined by the

3246 Insurance Department by rule made in accordance with Title 63, Chapter 46a, Utah

3247 Administrative Rulemaking Act.

3248 (e) "Joint claimant with no dependents" means a husband and wife who:

3249 (i) file a single return jointly under this chapter for the taxable year; and

3250 (ii) do not claim a dependent under Section 151, Internal Revenue Code, on the  
3251 husband's and wife's federal individual income tax return for the taxable year.

3252 (f) "Single claimant with no dependents" means:

3253 (i) a single individual who:

3254 (A) files a single federal individual income tax return for the taxable year; and  
3255 (B) does not claim a dependent under Section 151, Internal Revenue Code, on the  
3256 single individual's federal individual income tax return for the taxable year;

3257 (ii) a head of household:

3258 (A) as defined in Section 2(b), Internal Revenue Code, who files a single federal  
3259 individual income tax return for the taxable year; and

3260 (B) who does not claim a dependent under Section 151, Internal Revenue Code, on the  
3261 head of household's federal individual income tax return for the taxable year; or

3262 (iii) a married individual who:

3263 (A) does not file a single federal individual income tax return jointly with that married  
3264 individual's spouse for the taxable year; and

3265 (B) does not claim a dependent under Section 151, Internal Revenue Code, on that  
3266 married individual's federal individual income tax return for the taxable year.

3267 (2) Subject to Subsection (3), and except as provided in Subsection (4), for taxable  
3268 years beginning on or after January 1, 2009, a claimant may claim a nonrefundable tax credit  
3269 equal to the product of:

3270 (a) the difference between:

3271 (i) the total amount the claimant pays during the taxable year for:

3272 (A) insurance offered under a health benefit plan; and  
3273 (B) an eligible insured individual; and

3274 (ii) excluded expenses; and

3275 (b) 5%.

3276 (3) The maximum amount of a tax credit described in Subsection (2) a claimant may  
3277 claim on a return for a taxable year is:

3278 (a) for a single claimant with no dependents, \$300;  
3279 (b) for a joint claimant with no dependents, \$600; or  
3280 (c) for a claimant with dependents, \$900.

3281 (4) A claimant may not claim a tax credit under this section if the claimant is eligible to  
3282 participate in insurance offered under a health benefit plan maintained and funded in whole or  
3283 in part by:

3284 (a) the claimant's employer; or

3285 (b) another person's employer.

3286 (5) A claimant may not carry forward or carry back a tax credit under this section.

3287 Section 59. Section **59-10-1024** is enacted to read:

3288 **59-10-1024. Nonrefundable tax credit for qualifying solar projects.**

3289 (1) As used in this section:

3290 (a) "Active solar system" is as defined in Section 59-10-1014.

3291 (b) "Purchaser" means a claimant, estate, or trust that purchases one or more solar units  
3292 from a qualifying political subdivision.

3293 (c) "Qualifying political subdivision" means:

3294 (i) a city or town in this state;

3295 (ii) an interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act;

3296 or

3297 (iii) a special service district created under Title 17A, Chapter 2, Part 13, Utah Special  
3298 Service District Act.

3299 (d) "Qualifying solar project" means the portion of an active solar system:

3300 (i) that a qualifying political subdivision:

3301 (A) constructs;

3302 (B) controls; or

3303 (C) owns;

3304 (ii) with respect to which the qualifying political subdivision described in Subsection

3305 (1)(c)(i) sells one or more solar units; and

3306 (iii) that generates electrical output that is furnished:

3307 (A) to one or more residential units; or

3308 (B) for the benefit of one or more residential units.

3309 (e) "Residential unit" is as defined in Section 59-10-1014.

3310 (f) "Solar unit" means a portion of the electrical output:

3311 (i) of a qualifying solar project;

3312 (ii) that a qualifying political subdivision sells to a purchaser; and  
3313 (iii) the purchase of which requires that the purchaser agree to bear a proportionate  
3314 share of the expense of the qualifying solar project:  
3315 (A) in accordance with a written agreement between the purchaser and the qualifying  
3316 political subdivision;  
3317 (B) in exchange for a credit on the purchaser's electrical bill; and  
3318 (C) as determined by a formula established by the qualifying political subdivision.  
3319 (2) Subject to Subsection (3), for taxable years beginning on or after January 1, 2009, a  
3320 purchaser may claim a nonrefundable tax credit equal to the product of:  
3321 (a) the amount the purchaser pays to purchase one or more solar units during the  
3322 taxable year; and  
3323 (b) 25%.  
3324 (3) For a taxable year, a tax credit under this section may not exceed \$2,000 on a  
3325 return.  
3326 (4) A purchaser may carry forward a tax credit under this section for a period that does  
3327 not exceed the next four taxable years if:  
3328 (a) the purchaser is allowed to claim a tax credit under this section for a taxable year;  
3329 and  
3330 (b) the amount of the tax credit exceeds the purchaser's tax liability under this chapter  
3331 for that taxable year.  
3332 (5) Subject to Section 59-10-1014, a tax credit under this section is in addition to any  
3333 other tax credit allowed by this chapter.  
3334 (6) (a) On or before October 1, 2012, and every five years after October 1, 2012, the  
3335 Utah Tax Review Commission shall review the tax credit allowed by this section and make  
3336 recommendations to the Revenue and Taxation Interim Committee concerning whether the tax  
3337 credit should be continued, modified, or repealed.  
3338 (b) The Utah Tax Review Commission's report under Subsection (6)(a) shall include  
3339 information concerning the cost of the tax credit, the purpose and effectiveness of the tax  
3340 credit, and the state's benefit from the tax credit.  
3341 Section 60. Section **59-10-1106** is amended to read:  
3342 **59-10-1106. Renewable energy tax credit.**

- 3343 (1) As used in this section:
- 3344 (a) "Active solar system" is as defined in Section 59-10-1014.
- 3345 (b) "Biomass system" is as defined in Section 59-10-1014.
- 3346 (c) "Business entity" is as defined in Section 59-10-1014.
- 3347 (d) "Commercial energy system" means any active solar, passive solar, geothermal
- 3348 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
- 3349 biomass system used to supply energy to a commercial unit or as a commercial enterprise.
- 3350 (e) "Commercial enterprise" means a business entity [~~whose purpose is to produce~~
- 3351 that:
- 3352 (i) is a claimant, estate, or trust; and
- 3353 (ii) has the purpose of producing electrical, mechanical, or thermal energy for sale from
- 3354 a commercial energy system.
- 3355 (f) (i) "Commercial unit" means any building or structure that a business entity that is a
- 3356 claimant, estate, or trust uses to transact its business.
- 3357 (ii) Notwithstanding Subsection (1)(f)(i):
- 3358 (A) in the case of an active solar system used for agricultural water pumping or a wind
- 3359 system, each individual energy generating device shall be a commercial unit; and
- 3360 (B) if an energy system is the building or structure that a business entity that is a
- 3361 claimant, estate, or trust uses to transact its business, a commercial unit is the complete energy
- 3362 system itself.
- 3363 (g) "Direct-use geothermal system" is as defined in Section 59-10-1014.
- 3364 (h) "Geothermal electricity" is as defined in Section 59-10-1014.
- 3365 (i) "Geothermal heat-pump system" is as defined in Section 59-10-1014.
- 3366 (j) "Hydroenergy system" is as defined in Section 59-10-1014.
- 3367 [~~(k) "Individual taxpayer" means any person who is a taxpayer as defined in Section~~
- 3368 ~~59-10-103 and an individual as defined in Section 59-10-103.]~~
- 3369 [~~(k)~~ (k) "Passive solar system" is as defined in Section 59-10-1014.
- 3370 [~~(l)~~ (l) "Utah Geological Survey" means the Utah Geological Survey established in
- 3371 Section 63-73-5.
- 3372 [~~(m)~~ (m) "Wind system" is as defined in Section 59-10-1014.
- 3373 (2) (a) (i) [~~For taxable years beginning on or after January 1, 2007, a~~ A business entity

3374 that is a claimant, estate, or trust that purchases or participates in the financing of a commercial  
3375 energy system situated in Utah is entitled to a refundable tax credit as provided in this  
3376 Subsection (2)(a) if the commercial energy system does not use wind, geothermal electricity, or  
3377 biomass equipment capable of producing a total of 660 or more kilowatts of electricity and:

3378 (A) the commercial energy system supplies all or part of the energy required by  
3379 commercial units owned or used by the business entity that is a claimant, estate, or trust; or

3380 (B) the business entity that is a claimant, estate, or trust sells all or part of the energy  
3381 produced by the commercial energy system as a commercial enterprise.

3382 (ii) (A) A business entity that is a claimant, estate, or trust is entitled to a tax credit of  
3383 up to 10% of the reasonable costs of any commercial energy system installed, including  
3384 installation costs, against any tax due under this chapter for the taxable year in which the  
3385 commercial energy system is completed and placed in service.

3386 (B) Notwithstanding Subsection (2)(a)(ii)(A), the total amount of the credit under this  
3387 Subsection (2)(a) may not exceed \$50,000 per commercial unit.

3388 (C) The credit under this Subsection (2)(a) is allowed for any commercial energy  
3389 system completed and placed in service on or after January 1, 2007.

3390 (iii) A business entity that is a claimant, estate, or trust that leases a commercial energy  
3391 system installed on a commercial unit is eligible for the tax credit under this Subsection (2)(a)  
3392 if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

3393 (iv) Only the principal recovery portion of the lease payments, which is the cost  
3394 incurred by a business entity that is a claimant, estate, or trust in acquiring a commercial energy  
3395 system, excluding interest charges and maintenance expenses, is eligible for the tax credit  
3396 under this Subsection (2)(a).

3397 (v) A business entity that is a claimant, estate, or trust that leases a commercial energy  
3398 system is eligible to use the tax credit under this Subsection (2)(a) for a period no greater than  
3399 seven years from the initiation of the lease.

3400 (b) (i) [~~For taxable years beginning on or after January 1, 2007, a~~] A business entity  
3401 that is a claimant, estate, or trust that owns a commercial energy system situated in Utah using  
3402 wind, geothermal electricity, or biomass equipment capable of producing a total of 660 or more  
3403 kilowatts of electricity is entitled to a refundable tax credit as provided in this section if:

3404 (A) the commercial energy system supplies all or part of the energy required by

3405 commercial units owned or used by the business entity that is a claimant, estate, or trust; or

3406 (B) the business entity that is a claimant, estate, or trust sells all or part of the energy  
3407 produced by the commercial energy system as a commercial enterprise.

3408 (ii) A business entity that is a claimant, estate, or trust is entitled to a tax credit under  
3409 this Subsection (2)(b) equal to the product of:

3410 (A) 0.35 cents; and

3411 (B) the kilowatt hours of electricity produced and either used or sold during the taxable  
3412 year.

3413 (iii) The credit allowed by this Subsection (2)(b):

3414 (A) may be claimed for production occurring during a period of 48 months beginning  
3415 with the month in which the commercial energy system is placed in service; and

3416 (B) may not be carried forward or back.

3417 (iv) A business entity that is a claimant, estate, or trust that leases a commercial energy  
3418 system installed on a commercial unit is eligible for the tax credit under this section if the  
3419 lessee can confirm that the lessor irrevocably elects not to claim the credit.

3420 (3) The tax credits provided for under this section are in addition to any tax credits  
3421 provided under the laws or rules and regulations of the United States.

3422 (4) (a) The Utah Geological Survey may set standards for commercial energy systems  
3423 claiming a tax credit under Subsection (2)(a) that cover the safety, reliability, efficiency,  
3424 leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax  
3425 credit use the state's renewable and nonrenewable energy resources in an appropriate and  
3426 economic manner.

3427 (b) A tax credit may not be taken under this section until the Utah Geological Survey  
3428 has certified that the commercial energy system has been completely installed and is a viable  
3429 system for saving or production of energy from renewable resources.

3430 (5) The Utah Geological Survey and the commission may make rules in accordance  
3431 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are necessary to  
3432 implement this section.

3433 (6) (a) On or before October 1, 2012, and every five years thereafter, the Utah Tax  
3434 Review Commission shall review each tax credit provided by this section and make  
3435 recommendations to the Revenue and Taxation Interim Committee concerning whether the

3436 credit should be continued, modified, or repealed.

3437 (b) The Utah Tax Review Commission's report under Subsection (6)(a) shall include  
3438 information concerning the cost of the credit, the purpose and effectiveness of the credit, and  
3439 the state's benefit from the credit.

3440 Section 61. Section **59-10-1301** is enacted to read:

3441 **Part 13. Individual Income Tax Contribution Act**

3442 **59-10-1301. Title.**

3443 This part is known as the "Individual Income Tax Contribution Act."

3444 Section 62. Section **59-10-1302** is enacted to read:

3445 **59-10-1302. Definitions.**

3446 As used in this part, "contribution" means a contribution a resident or nonresident  
3447 individual makes on an individual income tax return as allowed by this part.

3448 Section 63. Section **59-10-1303** is enacted to read:

3449 **59-10-1303. Contributions -- Amount -- Procedure for designating a contribution**  
3450 **-- Joint return -- Contribution irrevocable.**

3451 (1) A resident or nonresident individual that makes a contribution under this part, other  
3452 than Section 59-10-1311, may designate as the contribution any whole dollar amount of \$1 or  
3453 more.

3454 (2) If a resident or nonresident individual designating a contribution under this part  
3455 other than Section 59-10-1311:

3456 (a) is owed an individual income tax refund for the taxable year, the amount of the  
3457 contribution under this part shall be deducted from the resident or nonresident individual's  
3458 individual income tax refund; or

3459 (b) is not owed an individual income tax refund for the taxable year, the resident or  
3460 nonresident individual may remit a contribution under this part with the resident or nonresident  
3461 individual's individual income tax return.

3462 (3) If a husband and wife file a single individual income tax return jointly, a  
3463 contribution under this part, other than Section 59-10-1311, shall be a joint contribution.

3464 (4) A contribution under this part is irrevocable for the taxable year for which the  
3465 resident or nonresident individual makes the contribution.

3466 Section 64. Section **59-10-1304**, which is renumbered from Section 59-10-551 is

3467 renumbered and amended to read:

3468 ~~[59-10-551].~~ **59-10-1304. Removal of designation and prohibitions on**  
 3469 **collection for certain contributions on income tax form -- Conditions for removal and**  
 3470 **prohibitions on collection -- Commission reporting requirements.**

3471 (1) (a) If a contribution or combination of contributions described in Subsection (1)(b)  
 3472 generate less than \$30,000 per year for three consecutive years, the commission shall remove  
 3473 the designation for the contribution from the individual income tax return and may not collect  
 3474 the contribution from a resident or nonresident individual beginning two taxable years after the  
 3475 three-year period for which the contribution generates less than \$30,000 per year.

3476 (b) The following contributions apply to Subsection (1)(a):

3477 (i) the contribution provided for in Section ~~[59-10-530]~~ 59-10-1305;

3478 (ii) the contribution provided for in Section ~~[59-10-530.5]~~ 59-10-1306;

3479 (iii) the sum of the contributions provided for in Subsection ~~[59-10-549]~~  
 3480 59-10-1307(1)(a);

3481 (iv) the contribution provided for in Subsection ~~[59-10-549]~~ 59-10-1307(1)(b);

3482 (v) the contribution provided for in Section ~~[59-10-550]~~ 59-10-1308;

3483 (vi) the contribution provided for in Section ~~[59-10-550.1]~~ 59-10-1309; or

3484 (vii) the contribution provided for in Section ~~[59-10-550.2]~~ 59-10-1310.

3485 (2) If the commission removes the designation for a contribution under Subsection (1),  
 3486 the commission shall report to the Revenue and Taxation Interim Committee that the  
 3487 commission removed the designation on or before the November interim meeting of the year in  
 3488 which the commission determines to remove the designation.

3489 Section 65. Section **59-10-1305**, which is renumbered from Section 59-10-530 is  
 3490 renumbered and amended to read:

3491 ~~[59-10-530].~~ **59-10-1305. Nongame wildlife contribution -- Credit to**  
 3492 **Wildlife Resources Account.**

3493 ~~[(1) The Legislature hereby declares that wildlife species which are endangered,~~  
 3494 ~~threatened with extinction, not commonly pursued, killed, or consumed either for sport or~~  
 3495 ~~profit, and are not nuisance predators presently being brought under control by the state~~  
 3496 ~~referred to herein as "nongame wildlife," have need of special protection and that it is in the~~  
 3497 ~~public interest to preserve, protect, perpetuate, and enhance nongame wildlife resources of this~~

3498 ~~state through preservation of a satisfactory environment and an ecological balance. The~~  
3499 ~~Legislature specifically recognizes that such nongame wildlife includes protected wildlife,~~  
3500 ~~endangered and threatened wildlife, aquatic wildlife, specialized habitat wildlife, both~~  
3501 ~~terrestrial and aquatic types, and mollusks, crustaceans, and other invertebrates under the~~  
3502 ~~jurisdiction of the Division of Wildlife Resources. This section is enacted to provide a means~~  
3503 ~~by which such protection may be financially aided through a voluntary check-off designation~~  
3504 ~~on state income tax return forms. The intent of the Legislature is that this program of the~~  
3505 ~~income tax check-off is supplemental to any other funding and in no way is intended to take the~~  
3506 ~~place of the funding that would otherwise be appropriated for this purpose.]~~

3507 (1) As used in this section, "nongame wildlife" means wildlife species that are:

3508 (a) (i) protected;

3509 (ii) endangered; or

3510 (iii) threatened with extinction;

3511 (b) under the jurisdiction of the Division of Wildlife Resources, including:

3512 (i) aquatic wildlife;

3513 (ii) a crustacean;

3514 (iii) an invertebrate;

3515 (iv) a mollusk; or

3516 (v) specialized habitat wildlife, including an aquatic or terrestrial type of specialized  
3517 habitat wildlife;

3518 (c) not commonly pursued, killed, or consumed for sport or profit; and

3519 (d) not nuisance predators presently being brought under control by the state.

3520 (2) Except as provided in Section [59-10-551, each individual taxpayer required to file

3521 a return pursuant to Section 59-10-502] 59-10-1304, a resident or nonresident individual that

3522 files an individual income tax return under this chapter may designate on the resident or

3523 nonresident individual's individual income tax return a contribution [of \$1, \$5, \$10, or another

3524 amount not less than \$1, or no contribution, to the state Nongame Wildlife Program] as

3525 provided in this part to preserve, protect, perpetuate, and enhance nongame wildlife resources

3526 of the state through preservation of a satisfactory environment and an ecological balance. [If

3527 the return is a joint return, any amount designated as a contribution to this program is to be

3528 deducted from the individual's state tax refund and shall be a joint contribution. This option,

3529 once exercised, is irrevocable during the tax year in which it was effective.]

3530 [~~(3)~~ The commission may promulgate rules to effectuate the provisions of this section.]

3531 [~~(4)~~ (3) The commission shall:

3532 (a) determine annually the total amount of contributions designated [~~pursuant to~~] in  
3533 accordance with this section; and [~~shall report such amount to the state treasurer who shall~~  
3534 credit such amount]

3535 (b) credit the amount described in Subsection (3)(a) to the Wildlife Resources Account  
3536 [~~as provided for in Section 23-14-14~~] in accordance with Section 23-14-13.

3537 [~~(5)~~ This section applies to calendar-year taxpayers beginning January 1, 1980, and to  
3538 fiscal-year taxpayers for any part of the taxable year accruing after December 31, 1979, and to  
3539 all taxable years thereafter.]

3540 Section 66. Section **59-10-1306**, which is renumbered from Section 59-10-530.5 is  
3541 renumbered and amended to read:

3542 [~~59-10-530.5~~]. **59-10-1306. Homeless contribution -- Credit to Pamela**  
3543 **Atkinson Homeless Trust Account.**

3544 (1) [~~(a)~~] Except as provided in Section [~~59-10-551, each taxpayer required to file a~~  
3545 ~~return pursuant to Section 59-10-502 may designate on the return a contribution of \$2, \$5, \$10,~~  
3546 ~~or another amount not less than \$2, or no contribution,~~] 59-10-1304, a resident or nonresident  
3547 individual that files an individual income tax return under this chapter may designate on the  
3548 resident or nonresident individual's individual income tax return a contribution to the Pamela  
3549 Atkinson Homeless Trust Account as provided in this part.

3550 [~~(b)~~ Any amount designated as a contribution to this program is to be deducted from  
3551 the individual's state tax refund and, if a joint return, shall be a joint contribution.]

3552 [~~(c)~~ This option, once exercised, is irrevocable during the tax year in which it was  
3553 effective.]

3554 [~~(d)~~ If no refund is due, the taxpayer may remit the contribution with the return.]

3555 [~~(2)~~ The commission may make rules to implement this section.]

3556 [~~(3)~~ (2) The commission shall:

3557 (a) determine annually the total amount of contributions designated [~~pursuant to~~] in  
3558 accordance with this section; and [~~shall report such amount to the state treasurer who shall~~  
3559 credit such amount]

3560 (b) credit the amount described in Subsection (2)(a) to the Pamela Atkinson Homeless  
3561 Trust Account [as provided for in] created by Section 9-4-803.

3562 ~~[(4) This section applies to calendar-year taxpayers beginning January 1, 1988, and to~~  
3563 ~~fiscal-year taxpayers for any part of the taxable year accruing after December 31, 1988, and to~~  
3564 ~~all taxable years thereafter.]~~

3565 Section 67. Section **59-10-1307**, which is renumbered from Section 59-10-549 is  
3566 renumbered and amended to read:

3567 **[59-10-549]. 59-10-1307. Contributions for education.**

3568 (1) Except as provided in Section ~~[59-10-551, a taxpayer that files a return pursuant to~~  
3569 ~~Section 59-10-502]~~ 59-10-1304, a resident or nonresident individual that files an individual  
3570 income tax return under this chapter may designate on the resident or nonresident individual's  
3571 individual income tax return a contribution as provided in this [section] part to:

3572 (a) (i) the foundation of any school district if that foundation is exempt from federal  
3573 income taxation under Section 501(c)(3), Internal Revenue Code; or

3574 (ii) a school district described in Title 53A, Chapter 2, School Districts, if the school  
3575 district has not established a foundation; or

3576 (b) a college campus of the Utah College of Applied Technology listed in Section  
3577 53B-2a-105~~;~~ or.

3578 ~~[(c) for taxable years beginning on or after January 1, 2004, but beginning on or before~~  
3579 ~~December 31, 2006, the Uniform School Fund.]~~

3580 ~~[(2) (a) A taxpayer may designate as a contribution under this section any whole dollar~~  
3581 ~~amount of \$1 or more.]~~

3582 ~~[(b) (i) If the taxpayer is owed an individual income tax refund for the taxable year, the~~  
3583 ~~amount of a contribution under this section shall be deducted from the taxpayer's individual~~  
3584 ~~income tax refund.]~~

3585 ~~[(ii) If the taxpayer is not owed an individual income tax refund for the taxable year,~~  
3586 ~~the taxpayer may remit a contribution under this section with the taxpayer's individual income~~  
3587 ~~tax return.]~~

3588 ~~[(c) If a taxpayer files a joint return, the contribution under this section shall be a joint~~  
3589 ~~contribution.]~~

3590 ~~[(d) A contribution under this section is irrevocable during the taxable year for which~~

3591 ~~the taxpayer makes the contribution.]~~

3592 ~~[(3)] (2) If a [taxpayer] resident or nonresident individual designates an amount as a~~  
 3593 ~~contribution under:~~

3594 (a) Subsection (1)(a)(i), but does not designate a particular school district foundation to  
 3595 receive the contribution, the contribution shall be made to the Utah State Office of Education to  
 3596 be distributed to one or more associations of foundations:

3597 (i) if those foundations that are members of the association are established in  
 3598 accordance with Section 53A-4-205; and

3599 (ii) as determined by the Utah State Office of Education; or

3600 (b) Subsection (1)(a)(ii), but does not designate a particular school district to receive  
 3601 the contribution, the contribution shall be made to the Utah State Office of Education.

3602 ~~[(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~  
 3603 ~~the commission may make rules to implement this section.]~~

3604 ~~[(5)] (3) The commission shall:~~

3605 (a) determine annually the total amount of contributions designated to each entity  
 3606 described in Subsection (1) in accordance with this section; and

3607 ~~[(b) report this amount to the state treasurer.]~~

3608 ~~[(6) The state treasurer shall credit any contributions reported to the state treasurer in~~  
 3609 ~~accordance with Subsection (5):]~~

3610 ~~[(a)] (b) subject to Subsection [(3)] (2), [if a taxpayer designates a contribution to an~~  
 3611 ~~entity listed in Subsection (1)(a) or (b) in accordance with this section, to the entity that is~~  
 3612 ~~designated by the taxpayer; or] credit the amounts described in Subsection (1) to the entities.~~

3613 ~~[(b) if a taxpayer designates a contribution to the Uniform School Fund under~~  
 3614 ~~Subsection (1)(c) in accordance with this section, to the Uniform School Fund.]~~

3615 Section 68. Section **59-10-1308**, which is renumbered from Section 59-10-550 is  
 3616 renumbered and amended to read:

3617 ~~[59-10-550].~~ **59-10-1308. Children's organ transplants contribution --**  
 3618 **Credit to Kurt Oscarson Children's Organ Transplant Trust Account.**

3619 (1) Except as provided in Section ~~[59-10-551, a taxpayer who files a return pursuant to~~  
 3620 ~~Section 59-10-502] 59-10-1304, a resident or nonresident individual that files an individual~~  
 3621 ~~income tax return under this chapter may designate on the resident or nonresident individual's~~

3622 individual income tax return a contribution [~~of the amount of his refund, if any, or any other~~  
3623 ~~amount in excess of \$1 to the trust account created in]~~ to the Kurt Oscarson Children's Organ  
3624 Transplant Trust Account created by Section 26-18a-4.

3625 [~~(2) Any amount designated as a contribution to this trust account shall be deducted~~  
3626 ~~from the individual's state tax refund and, if a joint return, is a joint contribution. This option,~~  
3627 ~~once exercised, is irrevocable during the tax year in which it was effective. If no refund is due,~~  
3628 ~~the taxpayer may remit any contribution over \$1 with the return.]~~

3629 [~~(3) The commission may make rules to implement this section.]~~

3630 [~~(4)~~] (2) The commission shall:

3631 (a) determine annually the total amount of contributions designated [~~under~~] in  
3632 accordance with this section; and [~~shall report the amount to the state treasurer, who shall~~]

3633 (b) credit the amount described in Subsection (2)(a) to the [~~restricted account~~] Kurt  
3634 Oscarson Children's Organ Transplant Trust Account created [~~in~~] by Section 26-18a-4.

3635 [~~(5) This section applies to calendar-year taxpayers beginning January 1, 1992, and to~~  
3636 ~~fiscal-year taxpayers for any part of the taxable year accruing after December 31, 1992, and to~~  
3637 ~~each subsequent taxable year.]~~

3638 Section 69. Section **59-10-1309**, which is renumbered from Section 59-10-550.1 is  
3639 renumbered and amended to read:

3640 [~~59-10-550.1~~]. **59-10-1309. Contribution to Wolf Depredation and**  
3641 **Management Restricted Account.**

3642 (1) Except as provided in Section [~~59-10-551, for taxable years beginning on or after~~  
3643 ~~January 1, 2004]~~ 59-10-1304, a resident or nonresident individual that files an individual  
3644 income tax return under this chapter may designate on the resident or nonresident individual's  
3645 individual income tax return a contribution as provided in this section to be:

3646 (a) deposited into the Wolf Depredation and Management Restricted Account created  
3647 by Section 23-14-14.1; and

3648 (b) used for the purposes described in Section 23-14-14.1.

3649 [~~(2)(a) A resident or nonresident individual may designate as a contribution under this~~  
3650 ~~section any whole dollar amount of \$1 or more.]~~

3651 [~~(b) If a resident or nonresident individual designating a contribution under this~~  
3652 ~~section:]~~

3653 ~~[(i) is owed an individual income tax refund for the taxable year, the amount of the~~  
 3654 ~~contribution under this section shall be deducted from the resident or nonresident individual's~~  
 3655 ~~individual income tax refund; or]~~

3656 ~~[(ii) is not owed an individual income tax refund for the taxable year, the resident or~~  
 3657 ~~nonresident individual may remit a contribution under this section with the resident or~~  
 3658 ~~nonresident individual's individual income tax return.]~~

3659 ~~[(c) If a husband and wife file a single individual income tax return jointly, a~~  
 3660 ~~contribution under this section shall be a joint contribution.]~~

3661 ~~[(d) A contribution under this section is irrevocable for the taxable year for which the~~  
 3662 ~~resident or nonresident individual makes the contribution.]~~

3663 ~~[(3)]~~ (2) The commission shall:

3664 (a) determine annually the total amount of contributions designated in accordance with  
 3665 this section; and

3666 (b) credit the amount described in Subsection ~~[(3)]~~ (2)(a) to the Wolf Depredation and  
 3667 Management Restricted Account created by Section 23-14-14.1.

3668 Section 70. Section **59-10-1310**, which is renumbered from Section 59-10-550.2 is  
 3669 renumbered and amended to read:

3670 ~~[59-10-550.2].~~ **59-10-1310. Contribution to Cat and Dog Community Spay**  
 3671 **and Neuter Program Restricted Account.**

3672 (1) Except as provided in Section ~~[59-10-551, for taxable years beginning on or after~~  
 3673 ~~January 1, 2006]~~ 59-10-1304, a resident or nonresident individual that files an individual  
 3674 income tax return under this chapter may designate on the resident or nonresident individual's  
 3675 individual income tax return a contribution as provided in this section to be:

3676 (a) deposited into the Cat and Dog Community Spay and Neuter Program Restricted  
 3677 Account created by Section 26-48-102; and

3678 (b) distributed by the Department of Health as provided in Section 26-48-102.

3679 ~~[(2) (a) A resident or nonresident individual may designate as a contribution under this~~  
 3680 ~~section any whole dollar amount of \$1 or more.]~~

3681 ~~[(b) If a resident or nonresident individual designating a contribution under this~~  
 3682 ~~section:]~~

3683 ~~[(i) is owed an individual income tax refund for the taxable year, the amount of the~~

3684 ~~contribution under this section shall be deducted from the resident or nonresident individual's~~  
 3685 ~~individual income tax refund; or]~~

3686 ~~[(ii) is not owed an individual income tax refund for the taxable year, the resident or~~  
 3687 ~~nonresident individual may remit a contribution under this section with the resident or~~  
 3688 ~~nonresident individual's individual income tax return.]~~

3689 ~~[(c) If a husband and wife file a single individual income tax return jointly, a~~  
 3690 ~~contribution under this section shall be a joint contribution.]~~

3691 ~~[(d) A contribution under this section is irrevocable for the taxable year for which the~~  
 3692 ~~resident or nonresident individual makes the contribution.]~~

3693 ~~[(3)]~~ (2) The commission shall:

3694 (a) determine annually the total amount of contributions designated in accordance with  
 3695 this section; and

3696 (b) credit the amount described in Subsection ~~[(3)]~~ (2)(a) to the Cat and Dog  
 3697 Community Spay and Neuter Program Restricted Account created by Section 26-48-102.

3698 Section 71. Section **59-10-1311**, which is renumbered from Section 59-10-547 is  
 3699 renumbered and amended to read:

3700 ~~[59-10-547].~~ **59-10-1311. Election Campaign Fund contribution --**  
 3701 **Transfer from General Fund -- Form and procedure.**

3702 ~~[(1)(a) Every individual other than a nonresident alien whose income tax liability, less~~  
 3703 ~~any credit allowed by this chapter, for any taxable year is \$2 or more may designate that \$2 be~~  
 3704 ~~paid into the Election Campaign Fund established under Section 59-10-548.]~~

3705 (1) (a) A resident or nonresident individual, other than a nonresident alien, may  
 3706 designate on the resident or nonresident individual's individual income tax return a contribution  
 3707 of \$2 to the Election Campaign Fund created by Section 59-10-1312, if the resident or  
 3708 nonresident individual:

3709 (i) has a liability under this chapter for a taxable year of \$2 or more; and

3710 (ii) files a return under this chapter.

3711 (b) The commission shall transfer \$2 from the General Fund to the Election Campaign  
 3712 Fund for each ~~[campaign designation]~~ contribution made on an individual income tax return  
 3713 under this Subsection (1).

3714 (c) The transfer described in Subsection (1)(b) shall ~~[come]~~ be made from revenue

3715 generated from ~~[the]~~ state sales and use tax revenues collected in accordance with Chapter 12,  
 3716 Sales and Use Tax Act.

3717 (2) (a) A ~~[designation]~~ contribution under Subsection (1) may be made with respect to  
 3718 any taxable year at the time ~~[of filing the]~~ a resident or nonresident individual files a return for  
 3719 that taxable year.

3720 (b) The ~~[form for the return shall be prepared by the]~~ commission ~~[to include provision~~  
 3721 ~~for a campaign]~~ shall include the contribution [designation] allowed by this section:

3722 (i) on a return under this chapter; and

3723 (ii) for any political party as defined by Section 20A-1-102 that has qualified as a  
 3724 political party in the first six months of the calendar year for which the return is prepared.

3725 ~~[(c) The political parties shall be placed on the form in alphabetical order.]~~

3726 ~~[(d) Any individual who chooses to designate funds to the Election Campaign Fund~~  
 3727 ~~shall place a check mark opposite the name of the political party on the form provided by the~~  
 3728 ~~commission.]~~

3729 ~~[(e) The form shall also contain a box in which the taxpayer can]~~

3730 (c) The commission shall place a political party described in Subsection (2)(b) on a  
 3731 return described in Subsection (2)(b) in alphabetical order.

3732 (d) The commission shall include on a return described in Subsection (2)(b):

3733 (i) the option for a resident or nonresident individual to indicate that no contribution is  
 3734 to be made to any political party[-]; and

3735 (ii) a statement that a contribution a resident or nonresident individual, other than a  
 3736 nonresident alien, makes under this section may not:

3737 (A) increase the resident or nonresident individual's tax liability under this chapter; or

3738 (B) reduce the resident or nonresident individual's refund under this chapter.

3739 Section 72. Section **59-10-1312**, which is renumbered from Section 59-10-548 is  
 3740 renumbered and amended to read:

3741 ~~**[59-10-548].**~~ **59-10-1312. Election Campaign Fund -- Creation -- Funding**  
 3742 **for account -- Disbursement and distribution -- State treasurer requirement to provide a**  
 3743 **list of contributions designated to each political party.**

3744 (1) (a) As used in this section, "fund" means the Election Campaign Fund created by  
 3745 this section.

3746 ~~[(1)-(a)]~~ (b) There is ~~[established]~~ created an agency fund ~~[to be]~~ known as the  
 3747 "Election Campaign Fund."

3748 ~~[(b)]~~ (c) The fund shall consist of all amounts deposited to ~~[it as provided in]~~ the fund  
 3749 in accordance with Section ~~[59-10-547]~~ 59-10-1311.

3750 (2) On or before four months after the due date ~~[of the returns]~~ for filing a return  
 3751 required by this chapter in which ~~[designations of payment to the fund have been made]~~ a  
 3752 contribution is made in accordance with Section 59-10-1311, the state treasurer shall:

3753 (a) disburse that portion of the amounts deposited in the fund since the last  
 3754 disbursement;

3755 (i) that ~~[were]~~ are designated for a political party; and

3756 (ii) to the political party to which ~~[they were]~~ the amounts are designated; and

3757 (b) provide to the political party described in Subsection (2)(a)(ii) a list disclosing, for  
 3758 each county, the total amount designated by ~~[taxpayers]~~ resident or nonresident individuals,  
 3759 other than nonresident aliens, in that county.

3760 Section 73. Section **59-10-1401** is enacted to read:

3761 **Part 14. Income Tax Treatment of Pass-Through Entities Act**

3762 **59-10-1401. Title.**

3763 This part is known as the "Income Tax Treatment of Pass-Through Entities Act."

3764 Section 74. Section **59-10-1402** is enacted to read:

3765 **59-10-1402. Definitions.**

3766 As used in this part:

3767 (1) "Limited liability company" includes a foreign limited liability company.

3768 (2) (a) "Pass-through entity" means a business entity that is:

3769 (i) a general partnership;

3770 (ii) a limited liability company;

3771 (iii) a limited liability partnership;

3772 (iv) a limited partnership; or

3773 (v) a business entity similar to Subsections (2)(a)(i) through (iv):

3774 (A) with respect to which the business entity's income or losses are divided among and  
 3775 passed through to taxpayers; and

3776 (B) as defined by the commission by rule made in accordance with Title 63, Chapter

3777 46a, Utah Administrative Rulemaking Act.

3778 (b) "Pass-through entity" does not include a trust.

3779 (3) "Taxpayer" means:

3780 (a) for a general partnership, a partner;

3781 (b) for a limited liability company, a member;

3782 (c) for a limited liability partnership, a partner;

3783 (d) for a limited partnership, a partner; or

3784 (e) for a business entity described in Subsection (2)(a)(v), a member, partner,

3785 shareholder, or other title designated by the commission by rule made in accordance with Title

3786 63, Chapter 46a, Utah Administrative Rulemaking Act.

3787 Section 75. Section **59-10-1403**, which is renumbered from Section 59-10-301 is

3788 renumbered and amended to read:

3789 **[59-10-301]. 59-10-1403. Pass-through entities -- Income tax treatment --**  
 3790 **Returns -- Limited liability companies.**

3791 ~~[A partnership]~~ (1) Subject to Subsection (3), a pass-through entity is not subject to  
 3792 ~~[the]~~ a tax imposed by this chapter. ~~[Persons carrying on business as partners are liable for the~~  
 3793 ~~tax imposed by this chapter only in their separate or individual capacities.]~~

3794 (2) The income or losses of a pass-through entity shall be divided among and passed  
 3795 through to taxpayers.

3796 (3) A pass-through entity is subject to the return filing requirements of Section  
 3797 59-10-507.

3798 (4) A pass-through entity that is a limited liability company that transacts business in  
 3799 the state shall be classified for purposes of taxation under this title in the same manner as the  
 3800 limited liability company is classified for federal income tax purposes.

3801 Section 76. Section **59-10-1404**, which is renumbered from Section 59-10-302 is  
 3802 renumbered and amended to read:

3803 **[59-10-302]. 59-10-1404. Character of an item of income, gain, loss, or**  
 3804 **deduction.**

3805 (1) Each item of ~~[partnership]~~ income, gain, loss, or deduction of a pass-through entity  
 3806 has the same character for a ~~[partner]~~ taxpayer under this chapter as ~~[it]~~ that item of income,  
 3807 gain, loss, or deduction has for federal income tax purposes. ~~[When an item]~~

3808 (2) If an item of income, gain, loss, or deduction described in Subsection (1) is not  
 3809 characterized for federal income tax purposes, [it] that item of income, gain, loss, or deduction  
 3810 has the same character for a [partner] taxpayer as if the item of income, gain, loss, or deduction  
 3811 is:

3812 (a) realized directly from the source from which the item of income, gain, loss, or  
 3813 deduction is realized by the [partnership;] pass-through entity; or

3814 (b) incurred in the same manner as incurred by the [partnership] pass-through entity.

3815 ~~[(2)]~~ (3) In determining state taxable income of a resident [partner any modification]  
 3816 taxpayer, any addition or subtraction described in Section 59-10-114 [which] that relates to an  
 3817 item of [partnership] income, gain, loss, or deduction of a pass-through entity shall be made in  
 3818 accordance with the [partner's] taxpayer's distributive share[,- for federal income tax purposes,];

3819 (a) of the [items] item to which the [modification] addition or subtraction relates[-  
 3820 Where a partner's]; and

3821 (b) for federal income tax purposes.

3822 (4) If a taxpayer's distributive share of [any such item] an item of income, gain, loss, or  
 3823 deduction described in Subsection (3) is not required to be taken into account separately for  
 3824 federal income tax purposes, the [partner's] taxpayer's distributive share of [such] that item of  
 3825 income, gain, loss, or deduction shall be determined in accordance with [his] that taxpayer's  
 3826 distributive share[- for federal income tax purposes,];

3827 (a) of [partnership] income or loss relating to the pass-through entity generally; and

3828 (b) for federal income tax purposes.

3829 Section 77. Section **59-10-1405**, which is renumbered from Section 59-10-303 is  
 3830 renumbered and amended to read:

3831 ~~[59-10-303].~~ **59-10-1405. Nonresident taxpayer's share of income, gain,**  
 3832 **loss, or deduction of a pass-through entity.**

3833 (1) [In determining the] Subject to Subsection (2), the adjusted gross income of a  
 3834 nonresident [partner of any partnership, there shall be included only that part] taxpayer shall be  
 3835 adjusted by only that portion of the taxpayer's distributive share of an item of income, gain,  
 3836 loss, or deduction of a pass-through entity derived from or connected with sources in this state  
 3837 [of the partner's distributive share of items of partnership income, gain, loss, and deduction  
 3838 entering into the partner's adjusted gross income, as such part is determined under rules

3839 ~~prescribed by the commission in accordance with the general rules in Section 59-10-116).~~

3840 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
 3841 commission may make rules for determining the adjustment required by Subsection (1) if those  
 3842 rules are consistent with the principles of Section 59-10-116.

3843 ~~[(2)] (3) In determining the [sources] source of a nonresident [partner's] taxpayer's~~  
 3844 ~~income, [no effect shall be given to a provision in the partnership agreement which] the~~  
 3845 following provisions in a pass-through entity agreement may not be considered:

3846 (a) a provision that:

3847 ~~[(a)] (i) characterizes [payments] a payment to the [partner] taxpayer as being for~~  
 3848 ~~[services or for];~~

3849 (A) a service; or

3850 (B) the use of capital[; or];

3851 (b) except as provided in Subsection (5), a provision that allocates to the [partner]  
 3852 taxpayer, as income or gain from [sources] a source outside this state, a greater proportion of  
 3853 the [partner's] taxpayer's distributive share of [partnership] income or gain of the pass-through  
 3854 entity than the ratio of [partnership] income or gain of the pass-through entity from sources  
 3855 outside this state to [partnership] income or gain of the pass-through entity from all sources[;  
 3856 except as authorized in Subsection (4)]; or

3857 ~~[(b)] (c) except as provided in Subsection (5), a provision that allocates to the [partner]~~  
 3858 ~~taxpayer a greater proportion of [a partnership] an item of loss or deduction of the pass-through~~  
 3859 ~~entity connected with sources in this state than the [partner's] taxpayer's proportionate share[;~~  
 3860 ~~for federal income tax purposes;] of [partnership] loss or deduction generally[; except as~~  
 3861 ~~authorized in Subsection (4)].;~~

3862 (i) relating to the pass-through entity; and

3863 (ii) for federal income tax purposes.

3864 ~~[(3)] (4) Any [modification] addition or subtraction described in Section 59-10-114~~  
 3865 ~~that relates to an item of [partnership] income, gain, loss, or deduction[;] of a pass-through~~  
 3866 ~~entity shall be made in accordance with the [partner's] taxpayer's distributive share [for federal~~  
 3867 ~~income tax purposes of the item to which the modification relates, but limited to the portion of~~  
 3868 ~~such item derived from or connected with sources in this state.];~~

3869 (a) of the portion of the item of income, gain, loss, or deduction required to be added or

3870 subtracted under Section 59-10-114 that is derived from or connected with sources in the state;  
 3871 and

3872 (b) for federal income tax purposes.

3873 ~~[(4) The]~~ (5) (a) Subject to Subsection (5)(b), the commission may~~[, on application,]~~  
 3874 by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
 3875 authorize the use of ~~[such other]~~ one or more methods ~~[of], other than a method described in~~  
 3876 Subsections (1) through (4), for determining:

3877 (i) a nonresident ~~[partner's]~~ taxpayer's portion of ~~[partnership items]~~ an item of income,  
 3878 gain, loss, or deduction of a pass-through entity derived from or connected with sources in  
 3879 ~~[this] the state~~~~[, and the modifications related thereto, as may be appropriate and equitable, on~~  
 3880 ~~such terms and conditions as the commission may require.]; and~~

3881 (ii) the portion of an item of income, gain, loss, or deduction required to be added or  
 3882 subtracted under Section 59-10-114 that is derived from or connected with sources in the state.

3883 (b) For purposes of Subsection (5)(a), the commission may authorize the use of one or  
 3884 more methods, other than a method described in Subsections (1) through (4), if:

3885 (i) the commission finds that the use of the method is appropriate and equitable; and

3886 (ii) the taxpayer applies to the commission.

3887 ~~[(5)]~~ (6) (a) A nonresident ~~[partner's]~~ taxpayer's distributive share of ~~[items]~~ an item of  
 3888 income, gain, loss, or deduction shall be determined ~~[under Subsection 59-10-302(2)]~~ in  
 3889 accordance with the principles of Subsections 59-10-1404(3) and (4).

3890 (b) The character of ~~[partnership items]~~ an item of income, gain, loss, or deduction for  
 3891 a nonresident ~~[partner]~~ taxpayer shall be determined ~~[under Subsection 59-10-302(1)]~~ in  
 3892 accordance with the principles of Subsections 59-10-1404(1) and (2).

3893 Section 78. Section **59-12-103** is amended to read:

3894 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**  
 3895 **tax revenues.**

3896 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or  
 3897 charged for the following transactions:

3898 (a) retail sales of tangible personal property made within the state;

3899 (b) amounts paid:

3900 (i) to a:

3901 (A) telephone service provider regardless of whether the telephone service provider is  
3902 municipally or privately owned; or  
3903 (B) telegraph corporation:  
3904 (I) as defined in Section 54-2-1; and  
3905 (II) regardless of whether the telegraph corporation is municipally or privately owned;  
3906 and  
3907 (ii) for:  
3908 (A) telephone service, other than mobile telecommunications service, that originates  
3909 and terminates within the boundaries of this state;  
3910 (B) mobile telecommunications service that originates and terminates within the  
3911 boundaries of one state only to the extent permitted by the Mobile Telecommunications  
3912 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or  
3913 (C) telegraph service;  
3914 (c) sales of the following for commercial use:  
3915 (i) gas;  
3916 (ii) electricity;  
3917 (iii) heat;  
3918 (iv) coal;  
3919 (v) fuel oil; or  
3920 (vi) other fuels;  
3921 (d) sales of the following for residential use:  
3922 (i) gas;  
3923 (ii) electricity;  
3924 (iii) heat;  
3925 (iv) coal;  
3926 (v) fuel oil; or  
3927 (vi) other fuels;  
3928 (e) sales of prepared food;  
3929 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or  
3930 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,  
3931 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,

3932 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit  
3933 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf  
3934 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,  
3935 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,  
3936 horseback rides, sports activities, or any other amusement, entertainment, recreation,  
3937 exhibition, cultural, or athletic activity;

3938 (g) amounts paid or charged for services for repairs or renovations of tangible personal  
3939 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

3940 (i) the tangible personal property; and

3941 (ii) parts used in the repairs or renovations of the tangible personal property described  
3942 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations  
3943 of that tangible personal property;

3944 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for  
3945 assisted cleaning or washing of tangible personal property;

3946 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court  
3947 accommodations and services that are regularly rented for less than 30 consecutive days;

3948 (j) amounts paid or charged for laundry or dry cleaning services;

3949 (k) amounts paid or charged for leases or rentals of tangible personal property if within  
3950 this state the tangible personal property is:

3951 (i) stored;

3952 (ii) used; or

3953 (iii) otherwise consumed;

3954 (l) amounts paid or charged for tangible personal property if within this state the  
3955 tangible personal property is:

3956 (i) stored;

3957 (ii) used; or

3958 (iii) consumed; and

3959 (m) amounts paid or charged for prepaid telephone calling cards.

3960 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax  
3961 is imposed on a transaction described in Subsection (1) equal to the sum of:

3962 (i) a state tax imposed on the transaction at a tax rate of [~~4.65%~~] 4.70%; and

3963 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the  
3964 transaction under this chapter other than this part.

3965 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed  
3966 on a transaction described in Subsection (1)(d) equal to the sum of:

3967 (i) a state tax imposed on the transaction at a tax rate of 2%; and

3968 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the  
3969 transaction under this chapter other than this part.

3970 (c) Except as provided in Subsection (2)(d) or (e), beginning on January 1, 2007, a  
3971 state tax and a local tax is imposed on amounts paid or charged for food and food ingredients  
3972 equal to the sum of:

3973 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at  
3974 a tax rate of 1.75%; and

3975 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the  
3976 amounts paid or charged for food and food ingredients under this chapter other than this part.

3977 (d) Except as provided in Subsection (2)(e), if a seller collects a tax in accordance with  
3978 Subsection 59-12-107(1)(b) on a transaction described in Subsection (1), a state tax and a local  
3979 tax is imposed on the transaction equal to the sum of:

3980 (i) a state tax imposed on the transaction at a tax rate of:

3981 (A) [~~4.65%~~ 4.70%] for a transaction other than a transaction described in Subsection  
3982 (2)(d)(i)(B) or (2)(d)(i)(C);

3983 (B) 2% for a transaction described in Subsection (1)(d); or

3984 (C) beginning on January 1, 2007, 1.75% on the amounts paid or charged for food and  
3985 food ingredients; and

3986 (ii) a local tax imposed on the transaction at a tax rate equal to the sum of the following  
3987 tax rates:

3988 (A) the tax rate authorized by Section 59-12-204, but only if all of the counties, cities,  
3989 and towns in the state impose the tax authorized by Section 59-12-204; and

3990 (B) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the  
3991 state impose the tax authorized by Section 59-12-1102.

3992 (e) (i) A state tax and a local tax is imposed on an entire bundled transaction as  
3993 provided in this Subsection (2)(e) if the bundled transaction is attributable to food and food

3994 ingredients and tangible personal property other than food and food ingredients.

3995 (ii) If the tax on a bundled transaction described in Subsection (2)(e)(i) is collected by a  
3996 seller other than a seller that collects a tax in accordance with Subsection 59-12-107(1)(b),  
3997 beginning on January 1, 2007, a state tax and a local tax is imposed on the entire bundled  
3998 transaction equal to the sum of:

3999 (A) a state tax imposed on the entire bundled transaction at the tax rate described in  
4000 Subsection (2)(a)(i); and

4001 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates  
4002 described in Subsection (2)(a)(ii).

4003 (iii) If the tax on a bundled transaction described in Subsection (2)(e)(i) is collected by  
4004 a seller in accordance with Subsection 59-12-107(1)(b), beginning on January 1, 2007, a state  
4005 tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

4006 (A) a state tax imposed on the entire bundled transaction at the tax rate described in  
4007 Subsection (2)(d)(i)(A); and

4008 (B) a local tax imposed on the entire bundled transaction at a tax rate equal to the sum  
4009 of the following tax rates:

4010 (I) the tax rate authorized by Section 59-12-204, but only if all of the counties, cities,  
4011 and towns in the state impose the tax authorized by Section 59-12-204; and

4012 (II) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the  
4013 state impose the tax authorized by Section 59-12-1102.

4014 (f) Subject to Subsections (2)(g) and (h), a tax rate repeal or tax rate change for a tax  
4015 rate imposed under the following shall take effect on the first day of a calendar quarter:

4016 (i) Subsection (2)(a)(i);

4017 (ii) Subsection (2)(b)(i);

4018 (iii) Subsection (2)(c)(i);

4019 (iv) Subsection (2)(d)(i);

4020 (v) Subsection (2)(e)(ii)(A); or

4021 (vi) Subsection (2)(e)(iii)(A).

4022 (g) (i) For a transaction described in Subsection (2)(g)(iii), a tax rate increase shall take  
4023 effect on the first day of the first billing period that begins after the effective date of the tax rate  
4024 increase if the billing period for the transaction begins before the effective date of a tax rate

4025 increase imposed under:

- 4026 (A) Subsection (2)(a)(i);
- 4027 (B) Subsection (2)(b)(i);
- 4028 (C) Subsection (2)(c)(i);
- 4029 (D) Subsection (2)(d)(i);
- 4030 (E) Subsection (2)(e)(ii)(A); or
- 4031 (F) Subsection (2)(e)(iii)(A).

4032 (ii) For a transaction described in Subsection (2)(g)(iii), the repeal of a tax or a tax rate  
4033 decrease shall take effect on the first day of the last billing period that began before the  
4034 effective date of the repeal of the tax or the tax rate decrease if the billing period for the  
4035 transaction begins before the effective date of the repeal of the tax or the tax rate decrease

4036 imposed under:

- 4037 (A) Subsection (2)(a)(i);
- 4038 (B) Subsection (2)(b)(i);
- 4039 (C) Subsection (2)(c)(i);
- 4040 (D) Subsection (2)(d)(i);
- 4041 (E) Subsection (2)(e)(ii)(A); or
- 4042 (F) Subsection (2)(e)(iii)(A).

4043 (iii) Subsections (2)(g)(i) and (ii) apply to transactions subject to a tax under:

- 4044 (A) Subsection (1)(b);
- 4045 (B) Subsection (1)(c);
- 4046 (C) Subsection (1)(d);
- 4047 (D) Subsection (1)(e);
- 4048 (E) Subsection (1)(f);
- 4049 (F) Subsection (1)(g);
- 4050 (G) Subsection (1)(h);
- 4051 (H) Subsection (1)(i);
- 4052 (I) Subsection (1)(j); or
- 4053 (J) Subsection (1)(k).

4054 (h) (i) For a tax rate described in Subsection (2)(h)(ii), if a tax due on a catalogue sale  
4055 is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal

4056 or change in a tax rate takes effect:

4057 (A) on the first day of a calendar quarter; and

4058 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

4059 (ii) Subsection (2)(h)(i) applies to the tax rates described in the following:

4060 (A) Subsection (2)(a)(i);

4061 (B) Subsection (2)(b)(i);

4062 (C) Subsection (2)(c)(i);

4063 (D) Subsection (2)(d)(i);

4064 (E) Subsection (2)(e)(ii)(A); or

4065 (F) Subsection (2)(e)(iii)(A).

4066 (iii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
4067 the commission may by rule define the term "catalogue sale."

4068 (3) (a) [~~Except as provided in Subsections (4) through (10), the~~] The following state  
4069 taxes shall be deposited into the General Fund:

4070 (i) the tax imposed by Subsection (2)(a)(i);

4071 (ii) the tax imposed by Subsection (2)(b)(i);

4072 (iii) the tax imposed by Subsection (2)(c)(i);

4073 (iv) the tax imposed by Subsection (2) (d)(i);

4074 (v) the tax imposed by Subsection (2)(e)(ii)(A); and

4075 (vi) the tax imposed by Subsection (2)(e)(iii)(A).

4076 (b) The following local taxes shall be distributed to a county, city, or town as provided  
4077 in this chapter:

4078 (i) the tax imposed by Subsection (2)(a)(ii);

4079 (ii) the tax imposed by Subsection (2)(b)(ii);

4080 (iii) the tax imposed by Subsection (2)(c)(ii); and

4081 (iv) the tax imposed by Subsection (2)(e)(ii)(B).

4082 (c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the  
4083 state shall receive the county's, city's, or town's proportionate share of the revenues generated  
4084 by the following local taxes as provided in Subsection (3)(c)(ii):

4085 (A) the local tax described in Subsection (2)(d)(ii); and

4086 (B) the local tax described in Subsection (2)(e)(iii)(B).

4087 (ii) For revenues generated by a tax described in Subsection (3)(c)(i), the commission  
4088 shall determine a county's, city's, or town's proportionate share of the revenues by:

4089 (A) calculating an amount equal to the population of the unincorporated area of the  
4090 county, city, or town divided by the total population of the state; and

4091 (B) multiplying the amount determined under Subsection (3)(c)(ii)(A) by the total  
4092 amount of revenues generated by the taxes described in Subsection (3)(c)(i) for all counties,  
4093 cities, and towns.

4094 (iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for  
4095 purposes of this section shall be derived from the most recent official census or census estimate  
4096 of the United States Census Bureau.

4097 (B) If a needed population estimate is not available from the United States Census  
4098 Bureau, population figures shall be derived from the estimate from the Utah Population  
4099 Estimates Committee created by executive order of the governor.

4100 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
4101 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)  
4102 through (g):

4103 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

4104 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

4105 (B) for the fiscal year; or

4106 (ii) \$17,500,000.

4107 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount  
4108 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the  
4109 Department of Natural Resources to:

4110 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to  
4111 protect sensitive plant and animal species; or

4112 (B) award grants, up to the amount authorized by the Legislature in an appropriations  
4113 act, to political subdivisions of the state to implement the measures described in Subsections  
4114 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

4115 (ii) Money transferred to the Department of Natural Resources under Subsection  
4116 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other  
4117 person to list or attempt to have listed a species as threatened or endangered under the

4118 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.  
4119 (iii) At the end of each fiscal year:  
4120 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
4121 Conservation and Development Fund created in Section 73-10-24;  
4122 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
4123 Program Subaccount created in Section 73-10c-5; and  
4124 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
4125 Program Subaccount created in Section 73-10c-5.  
4126 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in  
4127 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund  
4128 created in Section 4-18-6.  
4129 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described  
4130 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water  
4131 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of  
4132 water rights.  
4133 (ii) At the end of each fiscal year:  
4134 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
4135 Conservation and Development Fund created in Section 73-10-24;  
4136 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
4137 Program Subaccount created in Section 73-10c-5; and  
4138 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
4139 Program Subaccount created in Section 73-10c-5.  
4140 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described  
4141 in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development  
4142 Fund created in Section 73-10-24 for use by the Division of Water Resources.  
4143 (ii) In addition to the uses allowed of the Water Resources Conservation and  
4144 Development Fund under Section 73-10-24, the Water Resources Conservation and  
4145 Development Fund may also be used to:  
4146 (A) conduct hydrologic and geotechnical investigations by the Division of Water  
4147 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of  
4148 quantifying surface and ground water resources and describing the hydrologic systems of an

4149 area in sufficient detail so as to enable local and state resource managers to plan for and  
4150 accommodate growth in water use without jeopardizing the resource;

4151 (B) fund state required dam safety improvements; and

4152 (C) protect the state's interest in interstate water compact allocations, including the  
4153 hiring of technical and legal staff.

4154 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
4155 in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount  
4156 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

4157 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
4158 in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount  
4159 created in Section 73-10c-5 for use by the Division of Drinking Water to:

4160 (i) provide for the installation and repair of collection, treatment, storage, and  
4161 distribution facilities for any public water system, as defined in Section 19-4-102;

4162 (ii) develop underground sources of water, including springs and wells; and

4163 (iii) develop surface water sources.

4164 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
4165 2006, the difference between the following amounts shall be expended as provided in this  
4166 Subsection (5), if that difference is greater than \$1:

4167 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the  
4168 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

4169 (ii) \$17,500,000.

4170 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

4171 (A) transferred each fiscal year to the Department of Natural Resources as dedicated  
4172 credits; and

4173 (B) expended by the Department of Natural Resources for watershed rehabilitation or  
4174 restoration.

4175 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
4176 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund  
4177 created in Section 73-10-24.

4178 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the  
4179 remaining difference described in Subsection (5)(a) shall be:

4180 (A) transferred each fiscal year to the Division of Water Resources as dedicated  
4181 credits; and

4182 (B) expended by the Division of Water Resources for cloud-seeding projects  
4183 authorized by Title 73, Chapter 15, Modification of Weather.

4184 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
4185 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund  
4186 created in Section 73-10-24.

4187 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the  
4188 remaining difference described in Subsection (5)(a) shall be deposited into the Water  
4189 Resources Conservation and Development Fund created in Section 73-10-24 for use by the  
4190 Division of Water Resources for:

4191 (i) preconstruction costs:

4192 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter  
4193 26, Bear River Development Act; and

4194 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project  
4195 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

4196 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,  
4197 Chapter 26, Bear River Development Act;

4198 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project  
4199 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

4200 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and  
4201 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

4202 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water  
4203 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.

4204 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to  
4205 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be  
4206 transferred each year as dedicated credits to the Division of Water Rights to cover the costs  
4207 incurred for employing additional technical staff for the administration of water rights.

4208 (g) At the end of each fiscal year, any unexpended dedicated credits described in  
4209 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development  
4210 Fund created in Section 73-10-24.

4211 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
4212 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%  
4213 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in  
4214 the Transportation Fund created by Section 72-2-102.

4215 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,  
4216 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial  
4217 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed  
4218 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable  
4219 transactions under Subsection (1).

4220 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds  
4221 have been paid off and the highway projects completed that are intended to be paid from  
4222 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the  
4223 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of  
4224 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section  
4225 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated  
4226 by a 1/64% tax rate on the taxable transactions under Subsection (1).

4227 (8) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal  
4228 year 2004-05, the commission shall each year on or before the September 30 immediately  
4229 following the last day of the fiscal year deposit the difference described in Subsection (8)(b)  
4230 into the Remote Sales Restricted Account created in Section 59-12-103.2 if that difference is  
4231 greater than \$0.

4232 (b) The difference described in Subsection (8)(a) is equal to the difference between:

4233 (i) the total amount of the revenues the commission received from sellers collecting the  
4234 taxes described in Subsections (2)(d)(i) and (2)(e)(iii)(A) for the fiscal year immediately  
4235 preceding the September 30 described in Subsection (8)(a); and

4236 (ii) \$7,279,673.

4237 (9) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in  
4238 Subsection (7)(a), and until Subsection (9)(b) applies, for a fiscal year beginning on or after  
4239 July 1, 2007, the Division of Finance shall deposit into the Centennial Highway Fund  
4240 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection  
4241 (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a

4242 portion of the approximately 17% of sales and use tax revenues generated annually by the sales  
4243 and use tax on vehicles and vehicle-related products:

- 4244 (i) the tax imposed by Subsection (2)(a)(i);
- 4245 (ii) the tax imposed by Subsection (2)(b)(i);
- 4246 (iii) the tax imposed by Subsection (2)(c)(i); and
- 4247 (iv) the tax imposed by Subsection (2)(e)(ii)(A).

4248 (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under  
4249 Subsection (7)(b), when the highway general obligation bonds have been paid off and the  
4250 highway projects completed that are intended to be paid from revenues deposited in the  
4251 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations  
4252 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the  
4253 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes  
4254 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes,  
4255 which represents a portion of the approximately 17% of sales and use tax revenues generated  
4256 annually by the sales and use tax on vehicles and vehicle-related products:

- 4257 (i) the tax imposed by Subsection (2)(a)(i);
- 4258 (ii) the tax imposed by Subsection (2)(b)(i);
- 4259 (iii) the tax imposed by Subsection (2)(c)(i); and
- 4260 (iv) the tax imposed by Subsection (2)(e)(ii)(A).

4261 (10) (a) Notwithstanding Subsection (3)(a) and until Subsection (10)(b) applies, the  
4262 Division of Finance shall annually deposit \$90,000,000 of the revenues generated by the taxes  
4263 listed under Subsection (3)(a) into the Critical Highway Needs Fund created by Section  
4264 72-2-125.

4265 (b) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under  
4266 Subsections (7) and (9), when the general obligation bonds authorized by Section 63B-16-101  
4267 have been paid off and the highway projects completed that are included in the prioritized  
4268 project list under Subsection 72-2-125(4) as determined in accordance with Subsection  
4269 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues  
4270 generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund  
4271 of 2005 created by Section 72-2-124.

4272 (11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection

4273 (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of  
4274 Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the  
4275 amount of tax revenue generated by a .025% tax rate on the transactions described in  
4276 Subsection (1).

4277 (ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into  
4278 the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for  
4279 food and food ingredients, except for tax revenue generated by a bundled transaction  
4280 attributable to food and food ingredients and tangible personal property other than food and  
4281 food ingredients described in Subsection (2)(e).

4282 (b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii),  
4283 and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general  
4284 obligation bonds authorized by Section 63B-16-101 have been paid off and the highway  
4285 projects completed that are included in the prioritized project list under Subsection 72-2-125(4)  
4286 as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall  
4287 deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the  
4288 amount of tax revenue generated by a .025% tax rate on the transactions described in  
4289 Subsection (1).

4290 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into  
4291 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or  
4292 charged for food and food ingredients, except for tax revenue generated by a bundled  
4293 transaction attributable to food and food ingredients and tangible personal property other than  
4294 food and food ingredients described in Subsection (2)(e).

4295 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection  
4296 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the  
4297 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a  
4298 .025% tax rate on the transactions described in Subsection (1) to be expended to address  
4299 chokepoints in construction management.

4300 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into  
4301 the Transportation Fund any tax revenue generated by amounts paid or charged for food  
4302 ingredients, except for tax revenue generated by a bundled transaction attributable to food and  
4303 food ingredients and tangible personal property other than food and food ingredients described

4304 in Subsection (2)(e).

4305 Section 79. Section **59-12-104** is amended to read:

4306 **59-12-104. Exemptions.**

4307 The following sales and uses are exempt from the taxes imposed by this chapter:

4308 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax  
4309 under Chapter 13, Motor and Special Fuel Tax Act;

4310 (2) sales to the state, its institutions, and its political subdivisions; however, this  
4311 exemption does not apply to sales of:

4312 (a) construction materials except:

4313 (i) construction materials purchased by or on behalf of institutions of the public  
4314 education system as defined in Utah Constitution Article X, Section 2, provided the  
4315 construction materials are clearly identified and segregated and installed or converted to real  
4316 property which is owned by institutions of the public education system; and

4317 (ii) construction materials purchased by the state, its institutions, or its political  
4318 subdivisions which are installed or converted to real property by employees of the state, its  
4319 institutions, or its political subdivisions; or

4320 (b) tangible personal property in connection with the construction, operation,  
4321 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities  
4322 providing additional project capacity, as defined in Section 11-13-103;

4323 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

4324 (i) the proceeds of each sale do not exceed \$1; and

4325 (ii) the seller or operator of the vending machine reports an amount equal to 150% of  
4326 the cost of the item described in Subsection (3)(b) as goods consumed; and

4327 (b) Subsection (3)(a) applies to:

4328 (i) food and food ingredients; or

4329 (ii) prepared food;

4330 (4) sales of the following to a commercial airline carrier for in-flight consumption:

4331 (a) food and food ingredients;

4332 (b) prepared food; or

4333 (c) services related to Subsection (4)(a) or (b);

4334 (5) sales of parts and equipment for installation in aircraft operated by common carriers

4335 in interstate or foreign commerce;

4336 (6) sales of commercials, motion picture films, prerecorded audio program tapes or  
4337 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture  
4338 exhibitor, distributor, or commercial television or radio broadcaster;

4339 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal  
4340 property if the cleaning or washing of the tangible personal property is not assisted cleaning or  
4341 washing of tangible personal property;

4342 (b) if a seller that sells at the same business location assisted cleaning or washing of  
4343 tangible personal property and cleaning or washing of tangible personal property that is not  
4344 assisted cleaning or washing of tangible personal property, the exemption described in  
4345 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning  
4346 or washing of the tangible personal property; and

4347 (c) for purposes of Subsection (7)(b) and in accordance with Title 63, Chapter 46a,  
4348 Utah Administrative Rulemaking Act, the commission may make rules:

4349 (i) governing the circumstances under which sales are at the same business location;  
4350 and

4351 (ii) establishing the procedures and requirements for a seller to separately account for  
4352 sales of assisted cleaning or washing of tangible personal property;

4353 (8) sales made to or by religious or charitable institutions in the conduct of their regular  
4354 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are  
4355 fulfilled;

4356 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of  
4357 this state if the vehicle is:

4358 (a) not registered in this state; and

4359 (b) (i) not used in this state; or

4360 (ii) used in this state:

4361 (A) if the vehicle is not used to conduct business, for a time period that does not  
4362 exceed the longer of:

4363 (I) 30 days in any calendar year; or

4364 (II) the time period necessary to transport the vehicle to the borders of this state; or

4365 (B) if the vehicle is used to conduct business, for the time period necessary to transport

4366 the vehicle to the borders of this state;

4367 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

4368 (i) the item is intended for human use; and

4369 (ii) (A) a prescription was issued for the item; or

4370 (B) the item was purchased by a hospital or other medical facility; and

4371 (b) (i) Subsection (10)(a) applies to:

4372 (A) a drug;

4373 (B) a syringe; or

4374 (C) a stoma supply; and

4375 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

4376 commission may by rule define the terms:

4377 (A) "syringe"; or

4378 (B) "stoma supply";

4379 (11) sales or use of property, materials, or services used in the construction of or

4380 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

4381 (12) (a) sales of an item described in Subsection (12)(c) served by:

4382 (i) the following if the item described in Subsection (12)(c) is not available to the

4383 general public:

4384 (A) a church; or

4385 (B) a charitable institution;

4386 (ii) an institution of higher education if:

4387 (A) the item described in Subsection (12)(c) is not available to the general public; or

4388 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan

4389 offered by the institution of higher education; or

4390 (b) sales of an item described in Subsection (12)(c) provided for a patient by:

4391 (i) a medical facility; or

4392 (ii) a nursing facility; and

4393 (c) Subsections (12)(a) and (b) apply to:

4394 (i) food and food ingredients;

4395 (ii) prepared food; or

4396 (iii) alcoholic beverages;

4397 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property  
4398 by a person:

4399 (i) regardless of the number of transactions involving the sale of that tangible personal  
4400 property by that person; and

4401 (ii) not regularly engaged in the business of selling that type of tangible personal  
4402 property;

4403 (b) this Subsection (13) does not apply if:

4404 (i) the sale is one of a series of sales of a character to indicate that the person is  
4405 regularly engaged in the business of selling that type of tangible personal property;

4406 (ii) the person holds that person out as regularly engaged in the business of selling that  
4407 type of tangible personal property;

4408 (iii) the person sells an item of tangible personal property that the person purchased as  
4409 a sale that is exempt under Subsection (25); or

4410 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of  
4411 this state in which case the tax is based upon:

4412 (A) the bill of sale or other written evidence of value of the vehicle or vessel being  
4413 sold; or

4414 (B) in the absence of a bill of sale or other written evidence of value, the fair market  
4415 value of the vehicle or vessel being sold at the time of the sale as determined by the  
4416 commission; and

4417 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
4418 commission shall make rules establishing the circumstances under which:

4419 (i) a person is regularly engaged in the business of selling a type of tangible personal  
4420 property;

4421 (ii) a sale of tangible personal property is one of a series of sales of a character to  
4422 indicate that a person is regularly engaged in the business of selling that type of tangible  
4423 personal property; or

4424 (iii) a person holds that person out as regularly engaged in the business of selling a type  
4425 of tangible personal property;

4426 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after  
4427 July 1, 2006, for a purchase or lease by a manufacturing facility other than a cogeneration

4428 facility, for the following:

4429 (i) machinery and equipment that:

4430 (A) is used:

4431 (I) for a manufacturing facility other than a manufacturing facility that is a scrap

4432 recycler described in Subsection 59-12-102(48)(b):

4433 (Aa) in the manufacturing process; and

4434 (Bb) to manufacture an item sold as tangible personal property; or

4435 (II) for a manufacturing facility that is a scrap recycler described in Subsection

4436 59-12-102(48)(b), to process an item sold as tangible personal property; and

4437 (B) has an economic life of three or more years; and

4438 (ii) normal operating repair or replacement parts that:

4439 (A) have an economic life of three or more years; and

4440 (B) are used:

4441 (I) for a manufacturing facility in the state other than a manufacturing facility that is a

4442 scrap recycler described in Subsection 59-12-102(48)(b), in the manufacturing process; or

4443 (II) for a manufacturing facility in the state that is a scrap recycler described in

4444 Subsection 59-12-102(48)(b), to process an item sold as tangible personal property;

4445 (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a

4446 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,

4447 for the following:

4448 (A) machinery and equipment that:

4449 (I) is used:

4450 (Aa) in the manufacturing process; and

4451 (Bb) to manufacture an item sold as tangible personal property; and

4452 (II) has an economic life of three or more years; and

4453 (B) normal operating repair or replacement parts that:

4454 (I) are used in the manufacturing process in a manufacturing facility in the state; and

4455 (II) have an economic life of three or more years; and

4456 (ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,

4457 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may

4458 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:

- 4459 (A) for sales and use taxes paid under this chapter on the purchase or lease payment;  
4460 and
- 4461 (B) in accordance with Section 59-12-110;
- 4462 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,  
4463 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or  
4464 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for  
4465 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,  
4466 of the 2002 North American Industry Classification System of the federal Executive Office of  
4467 the President, Office of Management and Budget:
- 4468 (i) machinery and equipment that:
- 4469 (A) are used in:
- 4470 (I) the production process, other than the production of real property; or  
4471 (II) research and development; and
- 4472 (B) have an economic life of three or more years; and
- 4473 (ii) normal operating repair or replacement parts that:
- 4474 (A) have an economic life of three or more years; and  
4475 (B) are used in:
- 4476 (I) the production process, other than the production of real property, in an  
4477 establishment described in this Subsection (14)(c) in the state; or
- 4478 (II) research and development in an establishment described in this Subsection (14)(c)  
4479 in the state;
- 4480 (d) for purposes of this Subsection (14) and in accordance with Title 63, Chapter 46a,  
4481 Utah Administrative Rulemaking Act, the commission:
- 4482 (i) shall by rule define the term "establishment"; and  
4483 (ii) may by rule define what constitutes:
- 4484 (A) processing an item sold as tangible personal property;  
4485 (B) the production process, other than the production of real property; or  
4486 (C) research and development; and
- 4487 (e) on or before October 1, 2011, and every five years after October 1, 2011, the  
4488 commission shall:
- 4489 (i) review the exemptions described in this Subsection (14) and make

4490 recommendations to the Revenue and Taxation Interim Committee concerning whether the  
4491 exemptions should be continued, modified, or repealed; and  
4492 (ii) include in its report:  
4493 (A) the cost of the exemptions;  
4494 (B) the purpose and effectiveness of the exemptions; and  
4495 (C) the benefits of the exemptions to the state;  
4496 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:  
4497 (i) tooling;  
4498 (ii) special tooling;  
4499 (iii) support equipment;  
4500 (iv) special test equipment; or  
4501 (v) parts used in the repairs or renovations of tooling or equipment described in  
4502 Subsections (15)(a)(i) through (iv); and  
4503 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:  
4504 (i) the tooling, equipment, or parts are used or consumed exclusively in the  
4505 performance of any aerospace or electronics industry contract with the United States  
4506 government or any subcontract under that contract; and  
4507 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),  
4508 title to the tooling, equipment, or parts is vested in the United States government as evidenced  
4509 by:  
4510 (A) a government identification tag placed on the tooling, equipment, or parts; or  
4511 (B) listing on a government-approved property record if placing a government  
4512 identification tag on the tooling, equipment, or parts is impractical;  
4513 (16) sales of newspapers or newspaper subscriptions;  
4514 (17) (a) except as provided in Subsection (17)(b), tangible personal property traded in  
4515 as full or part payment of the purchase price, except that for purposes of calculating sales or use  
4516 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and  
4517 the tax is based upon:  
4518 (i) the bill of sale or other written evidence of value of the vehicle being sold and the  
4519 vehicle being traded in; or  
4520 (ii) in the absence of a bill of sale or other written evidence of value, the then existing

4521 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the  
4522 commission; and

4523 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the  
4524 following items of tangible personal property traded in as full or part payment of the purchase  
4525 price:

4526 (i) money;

4527 (ii) electricity;

4528 (iii) water;

4529 (iv) gas; or

4530 (v) steam;

4531 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property  
4532 used or consumed primarily and directly in farming operations, regardless of whether the  
4533 tangible personal property:

4534 (A) becomes part of real estate; or

4535 (B) is installed by a:

4536 (I) farmer;

4537 (II) contractor; or

4538 (III) subcontractor; or

4539 (ii) sales of parts used in the repairs or renovations of tangible personal property if the  
4540 tangible personal property is exempt under Subsection (18)(a)(i); and

4541 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following  
4542 tangible personal property are subject to the taxes imposed by this chapter:

4543 (i) (A) subject to Subsection (18)(b)(i)(B), the following tangible personal property if  
4544 the tangible personal property is used in a manner that is incidental to farming:

4545 (I) machinery;

4546 (II) equipment;

4547 (III) materials; or

4548 (IV) supplies; and

4549 (B) tangible personal property that is considered to be used in a manner that is  
4550 incidental to farming includes:

4551 (I) hand tools; or

4552 (II) maintenance and janitorial equipment and supplies;  
4553 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property if the tangible  
4554 personal property is used in an activity other than farming; and  
4555 (B) tangible personal property that is considered to be used in an activity other than  
4556 farming includes:  
4557 (I) office equipment and supplies; or  
4558 (II) equipment and supplies used in:  
4559 (Aa) the sale or distribution of farm products;  
4560 (Bb) research; or  
4561 (Cc) transportation; or  
4562 (iii) a vehicle required to be registered by the laws of this state during the period  
4563 ending two years after the date of the vehicle's purchase;  
4564 (19) sales of hay;  
4565 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or  
4566 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or  
4567 garden, farm, or other agricultural produce is sold by:  
4568 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other  
4569 agricultural produce;  
4570 (b) an employee of the producer described in Subsection (20)(a); or  
4571 (c) a member of the immediate family of the producer described in Subsection (20)(a);  
4572 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued  
4573 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;;  
4574 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,  
4575 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,  
4576 wholesaler, or retailer for use in packaging tangible personal property to be sold by that  
4577 manufacturer, processor, wholesaler, or retailer;  
4578 (23) property stored in the state for resale;  
4579 (24) (a) purchases of property if:  
4580 (i) the property is:  
4581 (A) purchased outside of this state;  
4582 (B) brought into this state;

- 4583 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and  
4584 (II) by a nonresident person who is not living or working in this state at the time of the  
4585 purchase;
- 4586 (C) used for the personal use or enjoyment of the nonresident person described in  
4587 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and  
4588 (D) not used in conducting business in this state; and  
4589 (ii) for:
- 4590 (A) property other than the property described in Subsection (24)(a)(ii)(B), the first use  
4591 of the property for a purpose for which the property is designed occurs outside of this state;  
4592 (B) a boat, the boat is registered outside of this state; or  
4593 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered  
4594 outside of this state;
- 4595 (b) the exemption provided for in Subsection (24)(a) does not apply to:  
4596 (i) a lease or rental of property; or  
4597 (ii) a sale of a vehicle exempt under Subsection (33); and  
4598 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for  
4599 purposes of Subsection (24)(a), the commission may by rule define what constitutes the  
4600 following:
- 4601 (i) conducting business in this state if that phrase has the same meaning in this  
4602 Subsection (24) as in Subsection (66);  
4603 (ii) the first use of property if that phrase has the same meaning in this Subsection (24)  
4604 as in Subsection (66); or  
4605 (iii) a purpose for which property is designed if that phrase has the same meaning in  
4606 this Subsection (24) as in Subsection (66);
- 4607 (25) property purchased for resale in this state, in the regular course of business, either  
4608 in its original form or as an ingredient or component part of a manufactured or compounded  
4609 product;
- 4610 (26) property upon which a sales or use tax was paid to some other state, or one of its  
4611 subdivisions, except that the state shall be paid any difference between the tax paid and the tax  
4612 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if  
4613 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax

4614 Act;

4615 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a  
4616 person for use in compounding a service taxable under the subsections;

4617 (28) purchases made in accordance with the special supplemental nutrition program for  
4618 women, infants, and children established in 42 U.S.C. Sec. 1786;

4619 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,  
4620 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens  
4621 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification

4622 Manual of the federal Executive Office of the President, Office of Management and Budget;

4623 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State  
4624 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

4625 (a) not registered in this state; and

4626 (b) (i) not used in this state; or

4627 (ii) used in this state:

4628 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a  
4629 time period that does not exceed the longer of:

4630 (I) 30 days in any calendar year; or

4631 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to  
4632 the borders of this state; or

4633 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time  
4634 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this  
4635 state;

4636 (31) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah  
4637 where a sales or use tax is not imposed, even if the title is passed in Utah;

4638 (32) amounts paid for the purchase of telephone service for purposes of providing  
4639 telephone service;

4640 (33) sales, leases, or uses of the following:

4641 (a) a vehicle by an authorized carrier; or

4642 (b) tangible personal property that is installed on a vehicle:

4643 (i) sold or leased to or used by an authorized carrier; and

4644 (ii) before the vehicle is placed in service for the first time;

- 4645 (34) (a) 45% of the sales price of any new manufactured home; and
- 4646 (b) 100% of the sales price of any used manufactured home;
- 4647 (35) sales relating to schools and fundraising sales;
- 4648 (36) sales or rentals of durable medical equipment if:
- 4649 (a) a person presents a prescription for the durable medical equipment; and
- 4650 (b) the durable medical equipment is used for home use only;
- 4651 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 4652 Section 72-11-102; and
- 4653 (b) the commission shall by rule determine the method for calculating sales exempt
- 4654 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 4655 (38) sales to a ski resort of:
- 4656 (a) snowmaking equipment;
- 4657 (b) ski slope grooming equipment;
- 4658 (c) passenger ropeways as defined in Section 72-11-102; or
- 4659 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 4660 described in Subsections (38)(a) through (c);
- 4661 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 4662 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
- 4663 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
- 4664 59-12-102;
- 4665 (b) if a seller that sells or rents at the same business location the right to use or operate
- 4666 for amusement, entertainment, or recreation one or more unassisted amusement devices and
- 4667 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
- 4668 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
- 4669 amusement, entertainment, or recreation for the assisted amusement devices; and
- 4670 (c) for purposes of Subsection (40)(b) and in accordance with Title 63, Chapter 46a,
- 4671 Utah Administrative Rulemaking Act, the commission may make rules:
- 4672 (i) governing the circumstances under which sales are at the same business location;
- 4673 and
- 4674 (ii) establishing the procedures and requirements for a seller to separately account for
- 4675 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for

4676 assisted amusement devices;

4677 (41) (a) sales of photocopies by:

4678 (i) a governmental entity; or

4679 (ii) an entity within the state system of public education, including:

4680 (A) a school; or

4681 (B) the State Board of Education; or

4682 (b) sales of publications by a governmental entity;

4683 (42) amounts paid for admission to an athletic event at an institution of higher

4684 education that is subject to the provisions of Title IX of the Education Amendments of 1972,

4685 20 U.S.C. Sec. 1681 et seq.;

4686 (43) sales of telephone service charged to a prepaid telephone calling card;

4687 (44) (a) sales of:

4688 (i) hearing aids;

4689 (ii) hearing aid accessories; or

4690 (iii) except as provided in Subsection (44)(b), parts used in the repairs or renovations

4691 of hearing aids or hearing aid accessories; and

4692 (b) for purposes of this Subsection (44), notwithstanding Subsection (44)(a)(iii),

4693 "parts" does not include batteries;

4694 (45) (a) sales made to or by:

4695 (i) an area agency on aging; or

4696 (ii) a senior citizen center owned by a county, city, or town; or

4697 (b) sales made by a senior citizen center that contracts with an area agency on aging;

4698 (46) sales or leases of semiconductor fabricating, processing, research, or development

4699 materials regardless of whether the semiconductor fabricating, processing, research, or

4700 development materials:

4701 (a) actually come into contact with a semiconductor; or

4702 (b) ultimately become incorporated into real property;

4703 (47) an amount paid by or charged to a purchaser for accommodations and services

4704 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section

4705 59-12-104.2;

4706 (48) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary

4707 sports event registration certificate in accordance with Section 41-3-306 for the event period  
4708 specified on the temporary sports event registration certificate;

4709 (49) sales or uses of electricity, if the sales or uses are:

4710 (a) made under a tariff adopted by the Public Service Commission of Utah only for  
4711 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy  
4712 source, as designated in the tariff by the Public Service Commission of Utah; and

4713 (b) for an amount of electricity that is:

4714 (i) unrelated to the amount of electricity used by the person purchasing the electricity  
4715 under the tariff described in Subsection (49)(a); and

4716 (ii) equivalent to the number of kilowatthours specified in the tariff described in  
4717 Subsection (49)(a) that may be purchased under the tariff described in Subsection (49)(a);

4718 (50) sales or rentals of mobility enhancing equipment if a person presents a  
4719 prescription for the mobility enhancing equipment;

4720 (51) sales of water in a:

4721 (a) pipe;

4722 (b) conduit;

4723 (c) ditch; or

4724 (d) reservoir;

4725 (52) sales of currency or coinage that constitute legal tender of the United States or of a  
4726 foreign nation;

4727 (53) (a) sales of an item described in Subsection (53)(b) if the item:

4728 (i) does not constitute legal tender of any nation; and

4729 (ii) has a gold, silver, or platinum content of 80% or more; and

4730 (b) Subsection (53)(a) applies to a gold, silver, or platinum:

4731 (i) ingot;

4732 (ii) bar;

4733 (iii) medallion; or

4734 (iv) decorative coin;

4735 (54) amounts paid on a sale-leaseback transaction;

4736 (55) sales of a prosthetic device:

4737 (a) for use on or in a human;

4738 (b) for which a prescription is issued; and  
4739 (c) to a person that presents a prescription for the prosthetic device;  
4740 (56) (a) except as provided in Subsection (56)(b), purchases, leases, or rentals of  
4741 machinery or equipment by an establishment described in Subsection (56)(c) if the machinery  
4742 or equipment is primarily used in the production or postproduction of the following media for  
4743 commercial distribution:  
4744 (i) a motion picture;  
4745 (ii) a television program;  
4746 (iii) a movie made for television;  
4747 (iv) a music video;  
4748 (v) a commercial;  
4749 (vi) a documentary; or  
4750 (vii) a medium similar to Subsections (56)(a)(i) through (vi) as determined by the  
4751 commission by administrative rule made in accordance with Subsection (56)(d); or  
4752 (b) notwithstanding Subsection (56)(a), purchases, leases, or rentals of machinery or  
4753 equipment by an establishment described in Subsection (56)(c) that is used for the production  
4754 or postproduction of the following are subject to the taxes imposed by this chapter:  
4755 (i) a live musical performance;  
4756 (ii) a live news program; or  
4757 (iii) a live sporting event;  
4758 (c) the following establishments listed in the 1997 North American Industry  
4759 Classification System of the federal Executive Office of the President, Office of Management  
4760 and Budget, apply to Subsections (56)(a) and (b):  
4761 (i) NAICS Code 512110; or  
4762 (ii) NAICS Code 51219; and  
4763 (d) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
4764 commission may by rule:  
4765 (i) prescribe what constitutes a medium similar to Subsections (56)(a)(i) through (vi);  
4766 or  
4767 (ii) define:  
4768 (A) "commercial distribution";

- 4769 (B) "live musical performance";
- 4770 (C) "live news program"; or
- 4771 (D) "live sporting event";
- 4772 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on
- 4773 or before June 30, [~~2009~~] 2019, of machinery or equipment that:
- 4774 (i) is leased or purchased for or by a facility that:
- 4775 (A) is a renewable energy production facility;
- 4776 (B) is located in the state; and
- 4777 (C) (I) becomes operational on or after July 1, 2004; or
- 4778 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 4779 2004 as a result of the use of the machinery or equipment;
- 4780 (ii) has an economic life of five or more years; and
- 4781 (iii) is used to make the facility or the increase in capacity of the facility described in
- 4782 Subsection (57)(a)(i) operational up to the point of interconnection with an existing
- 4783 transmission grid including:
- 4784 (A) a wind turbine;
- 4785 (B) generating equipment;
- 4786 (C) a control and monitoring system;
- 4787 (D) a power line;
- 4788 (E) substation equipment;
- 4789 (F) lighting;
- 4790 (G) fencing;
- 4791 (H) pipes; or
- 4792 (I) other equipment used for locating a power line or pole; and
- 4793 (b) this Subsection (57) does not apply to:
- 4794 (i) machinery or equipment used in construction of:
- 4795 (A) a new renewable energy production facility; or
- 4796 (B) the increase in the capacity of a renewable energy production facility;
- 4797 (ii) contracted services required for construction and routine maintenance activities;
- 4798 and
- 4799 (iii) unless the machinery or equipment is used or acquired for an increase in capacity

4800 of the facility described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or  
4801 acquired after:

4802 (A) the renewable energy production facility described in Subsection (57)(a)(i) is  
4803 operational as described in Subsection (57)(a)(iii); or

4804 (B) the increased capacity described in Subsection (57)(a)(i) is operational as described  
4805 in Subsection (57)(a)(iii);

4806 (58) (a) leases of seven or more years or purchases made on or after July 1, 2004 but on  
4807 or before June 30, [~~2009~~] 2019, of machinery or equipment that:

4808 (i) is leased or purchased for or by a facility that:

4809 (A) is a waste energy production facility;

4810 (B) is located in the state; and

4811 (C) (I) becomes operational on or after July 1, 2004; or

4812 (II) has its generation capacity increased by one or more megawatts on or after July 1,  
4813 2004 as a result of the use of the machinery or equipment;

4814 (ii) has an economic life of five or more years; and

4815 (iii) is used to make the facility or the increase in capacity of the facility described in  
4816 Subsection (58)(a)(i) operational up to the point of interconnection with an existing  
4817 transmission grid including:

4818 (A) generating equipment;

4819 (B) a control and monitoring system;

4820 (C) a power line;

4821 (D) substation equipment;

4822 (E) lighting;

4823 (F) fencing;

4824 (G) pipes; or

4825 (H) other equipment used for locating a power line or pole; and

4826 (b) this Subsection (58) does not apply to:

4827 (i) machinery or equipment used in construction of:

4828 (A) a new waste energy facility; or

4829 (B) the increase in the capacity of a waste energy facility;

4830 (ii) contracted services required for construction and routine maintenance activities;

4831 and

4832 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
4833 described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:

4834 (A) the waste energy facility described in Subsection (58)(a)(i) is operational as  
4835 described in Subsection (58)(a)(iii); or

4836 (B) the increased capacity described in Subsection (58)(a)(i) is operational as described  
4837 in Subsection (58)(a)(iii);

4838 (59) (a) leases of five or more years or purchases made on or after July 1, 2004 but on  
4839 or before June 30, [~~2009~~] 2019, of machinery or equipment that:

4840 (i) is leased or purchased for or by a facility that:

4841 (A) is located in the state;

4842 (B) produces fuel from biomass energy including:

4843 (I) methanol; or

4844 (II) ethanol; and

4845 (C) (I) becomes operational on or after July 1, 2004; or

4846 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as  
4847 a result of the installation of the machinery or equipment;

4848 (ii) has an economic life of five or more years; and

4849 (iii) is installed on the facility described in Subsection (59)(a)(i);

4850 (b) this Subsection (59) does not apply to:

4851 (i) machinery or equipment used in construction of:

4852 (A) a new facility described in Subsection (59)(a)(i); or

4853 (B) the increase in capacity of the facility described in Subsection (59)(a)(i); or

4854 (ii) contracted services required for construction and routine maintenance activities;

4855 and

4856 (iii) unless the machinery or equipment is used or acquired for an increase in capacity  
4857 described in Subsection (59)(a)(i)(C)(II), machinery or equipment used or acquired after:

4858 (A) the facility described in Subsection (59)(a)(i) is operational; or

4859 (B) the increased capacity described in Subsection (59)(a)(i) is operational;

4860 (60) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle  
4861 for purchasing the new vehicle;

4862 (61) (a) subject to Subsection (61)(b), sales of tangible personal property to persons  
4863 within this state that is subsequently shipped outside the state and incorporated pursuant to  
4864 contract into and becomes a part of real property located outside of this state, except to the  
4865 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar  
4866 transaction excise tax on it against which the other state or political entity allows a credit for  
4867 taxes imposed by this chapter; and

4868 (b) the exemption provided for in Subsection (61)(a):

4869 (i) is allowed only if the exemption is applied:

4870 (A) in calculating the purchase price of the tangible personal property; and

4871 (B) to a written contract that is in effect on July 1, 2004; and

4872 (ii) (A) does not apply beginning on the day on which the contract described in  
4873 Subsection (61)(b)(i):

4874 (I) is substantially modified; or

4875 (II) terminates; and

4876 (B) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
4877 the commission may by rule prescribe the circumstances under which a contract is substantially  
4878 modified;

4879 (62) purchases:

4880 (a) of one or more of the following items in printed or electronic format:

4881 (i) a list containing information that includes one or more:

4882 (A) names; or

4883 (B) addresses; or

4884 (ii) a database containing information that includes one or more:

4885 (A) names; or

4886 (B) addresses; and

4887 (b) used to send direct mail;

4888 (63) redemptions or repurchases of property by a person if that property was:

4889 (a) delivered to a pawnbroker as part of a pawn transaction; and

4890 (b) redeemed or repurchased within the time period established in a written agreement  
4891 between the person and the pawnbroker for redeeming or repurchasing the property;

4892 (64) (a) purchases or leases of an item described in Subsection (64)(b) if the item:

- 4893 (i) is purchased or leased by, or on behalf of, a telephone service provider; and
- 4894 (ii) has a useful economic life of one or more years; and
- 4895 (b) the following apply to Subsection (64)(a):
- 4896 (i) telecommunications enabling or facilitating equipment, machinery, or software;
- 4897 (ii) telecommunications equipment, machinery, or software required for 911 service;
- 4898 (iii) telecommunications maintenance or repair equipment, machinery, or software;
- 4899 (iv) telecommunications switching or routing equipment, machinery, or software; or
- 4900 (v) telecommunications transmission equipment, machinery, or software;
- 4901 (65) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible
- 4902 personal property used in the research and development of coal-to-liquids, oil shale, or tar
- 4903 sands technology; and
- 4904 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 4905 commission may, for purposes of Subsection (65)(a), make rules defining what constitutes
- 4906 tangible personal property used in the research and development of coal-to-liquids, oil shale,
- 4907 and tar sands technology;
- 4908 (66) (a) purchases of property if:
- 4909 (i) the property is:
- 4910 (A) purchased outside of this state;
- 4911 (B) brought into this state at any time after the purchase described in Subsection
- 4912 (66)(a)(i)(A); and
- 4913 (C) used in conducting business in this state; and
- 4914 (ii) for:
- 4915 (A) property other than the property described in Subsection (66)(a)(ii)(B), the first use
- 4916 of the property for a purpose for which the property is designed occurs outside of this state; or
- 4917 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
- 4918 outside of this state;
- 4919 (b) the exemption provided for in Subsection (66)(a) does not apply to:
- 4920 (i) a lease or rental of property; or
- 4921 (ii) a sale of a vehicle exempt under Subsection (33); and
- 4922 (c) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for
- 4923 purposes of Subsection (66)(a), the commission may by rule define what constitutes the

4924 following:

4925 (i) conducting business in this state if that phrase has the same meaning in this  
4926 Subsection (66) as in Subsection (24);

4927 (ii) the first use of property if that phrase has the same meaning in this Subsection (66)  
4928 as in Subsection (24); or

4929 (iii) a purpose for which property is designed if that phrase has the same meaning in  
4930 this Subsection (66) as in Subsection (24);

4931 (67) sales of disposable home medical equipment or supplies if:

4932 (a) a person presents a prescription for the disposable home medical equipment or  
4933 supplies;

4934 (b) the disposable home medical equipment or supplies are used exclusively by the  
4935 person to whom the prescription described in Subsection (67)(a) is issued; and

4936 (c) the disposable home medical equipment and supplies are listed as eligible for  
4937 payment under:

4938 (i) Title XVIII, federal Social Security Act; or

4939 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

4940 [and]

4941 (68) sales to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit  
4942 District Act, or to a subcontractor of a public transit district, including sales of construction  
4943 materials that are to be installed or converted to real property owned by the public transit  
4944 district[-]; and

4945 (69) sales of fuel to a common carrier that is a railroad for use in a locomotive engine.

4946 Section 80. Section **72-2-107** is amended to read:

4947 **72-2-107. Appropriation from Transportation Fund -- Deposit in class B and**  
4948 **class C roads account.**

4949 (1) There is appropriated to the department from the Transportation Fund annually an  
4950 amount equal to 30% of an amount which the director of finance shall compute in the  
4951 following manner: The total revenue deposited into the Transportation Fund during the fiscal  
4952 year from state highway-user taxes and fees, minus:

4953 (a) those amounts appropriated or transferred from the Transportation Fund during the  
4954 same fiscal year to:

4955 (i) the Department of Public Safety;  
4956 (ii) the State Tax Commission;  
4957 (iii) the Division of Finance;  
4958 (iv) the Utah Travel Council; and  
4959 (v) any other amounts appropriated or transferred for any other state agencies not a part  
4960 of the department; and

4961 (b) the amount of sales and use tax revenue deposited in the Transportation Fund in  
4962 accordance with [~~Subsection~~] Section 59-12-103[~~(6)~~].

4963 (2) All of this money shall be placed in an account to be known as the class B and class  
4964 C roads account to be used as provided in this title.

4965 (3) Each quarter of every year the director of finance shall make the necessary  
4966 accounting entries to transfer the money appropriated under this section to the class B and class  
4967 C roads account.

4968 (4) The funds in the class B and class C roads account shall be expended under the  
4969 direction of the department as the Legislature shall provide.

4970 Section 81. Section **72-2-124** is amended to read:

4971 **72-2-124. Transportation Investment Fund of 2005.**

4972 (1) There is created a special revenue fund entitled the Transportation Investment Fund  
4973 of 2005.

4974 (2) The fund consists of monies generated from the following sources:

4975 (a) any voluntary contributions received for the maintenance, construction,  
4976 reconstruction, or renovation of state and federal highways; [~~and~~]

4977 (b) appropriations made to the fund by the Legislature[-:]; and

4978 (c) the sales and use tax revenues deposited into the fund in accordance with Section  
4979 59-12-103.

4980 (3) When the highway general obligation bonds have been paid off and the highway  
4981 projects completed that are intended to be paid from revenues deposited in the Centennial  
4982 Highway Fund Restricted Account as determined by the Executive Appropriations Committee  
4983 under Subsection 72-2-118(6)(d), the fund shall also consist of monies generated from the  
4984 following sources:

4985 (a) registration fees designated under Subsection 41-1a-1201(6)(a);

4986 (b) the clean special fuel tax certificate surcharge under Subsection 59-13-304(3); and  
4987 (c) the sales and use tax amounts provided for in Section 59-12-103.

4988 (4) (a) The fund shall earn interest.

4989 (b) All interest earned on fund monies shall be deposited into the fund.

4990 (5) (a) Except as provided in Subsections (5)(b) and (c), the executive director may use  
4991 fund monies only to pay the costs of maintenance, construction, reconstruction, or renovation  
4992 to state and federal highways prioritized by the Transportation Commission through the  
4993 prioritization process for new transportation capacity projects adopted under Section 72-1-304.

4994 (b) The executive director may use fund monies deposited into the fund in fiscal year  
4995 2006 only to pay the costs of maintenance, construction, reconstruction, or renovation to state  
4996 and federal highways prioritized by the Transportation Commission.

4997 (c) The executive director may use fund monies to exchange for an equal or greater  
4998 amount of federal transportation funds to be used as provided in Subsection (5)(a).

4999 Section 82. Section **72-2-125** is amended to read:

5000 **72-2-125. Critical Highway Needs Fund.**

5001 (1) There is created a restricted special revenue fund entitled the Critical Highway  
5002 Needs Fund.

5003 (2) The fund consists of monies generated from the following sources:

5004 (a) any voluntary contributions received for the maintenance, construction,  
5005 reconstruction, or renovation of state and federal highways;

5006 (b) appropriations made to the fund by the Legislature; and

5007 (c) the sales and use tax revenues deposited into the fund in accordance with  
5008 [~~Subsection~~] Section 59-12-103[~~(10)~~].

5009 (3) (a) The fund shall earn interest.

5010 (b) All interest earned on fund monies shall be deposited into the fund.

5011 (4) (a) The executive director shall use monies deposited into the fund to pay:

5012 (i) the costs of right-of-way acquisition, maintenance, construction, reconstruction, or  
5013 renovation to state and federal highways identified by the department and prioritized by the  
5014 commission in accordance with this Subsection (4); and

5015 (ii) principal, interest, and issuance costs of bonds authorized by Section 63B-16-101.

5016 (b) (i) The department shall:

5017 (A) establish a complete list of projects to be maintained, constructed, reconstructed, or  
5018 renovated using the funding described in Subsection (4)(a) based on the following criteria:

5019 (I) the highway construction project is a high priority project due to high growth in the  
5020 surrounding area;

5021 (II) the highway construction project addresses critical access needs that have a high  
5022 impact due to commercial and energy development;

5023 (III) the highway construction project mitigates congestion;

5024 (IV) whether local matching funds are available for the highway construction project;

5025 and

5026 (V) the highway construction project is a critical alternative route for priority Interstate  
5027 15 reconstruction projects; and

5028 (B) submit the list of projects to the commission for prioritization in accordance with  
5029 Subsection (4)(c).

5030 (ii) A project that is included in the list under this Subsection (4):

5031 (A) is not required to be currently listed in the statewide long-range plan; and

5032 (B) is not required to be prioritized through the prioritization process for new

5033 transportation capacity projects adopted under Section 72-1-304.

5034 (c) The commission shall prioritize the project list submitted by the department in  
5035 accordance with Subsection (4)(b).

5036 (d) (i) Expenditures by the department for the construction of highway projects  
5037 prioritized under this Subsection (4) may not exceed \$1,000,000,000.

5038 (ii) Monies expended from the fund for principal, interest, and issuance costs of bonds  
5039 issued under Section 63B-16-101 are not considered expenditures for purposes of the  
5040 \$1,000,000,000 cap under Subsection (4)(d)(i).

5041 (e) (i) Before bonds authorized by Section 63B-16-101 may be issued in any fiscal  
5042 year, the department and the commission shall appear before the Executive Appropriations  
5043 Committee of the Legislature and present:

5044 (A) the commission's current list of projects established and prioritized in accordance  
5045 with this Subsection (4); and

5046 (B) the amount of bond proceeds that the department needs to provide funding for  
5047 projects on the project list prioritized in accordance with this Subsection (4) for the next fiscal

5048 year.

5049 (ii) The Executive Appropriations Committee of the Legislature shall review and  
5050 comment on the prioritized project list and the amount of bond proceeds needed to fund the  
5051 projects on the prioritized list.

5052 (f) The Division of Finance shall, from monies deposited into the fund, transfer the  
5053 amount of funds necessary to pay principal, interest, and issuance costs of bonds authorized by  
5054 Section 63B-16-101 in the current fiscal year to the appropriate debt service or sinking fund.

5055 (5) When the general obligation bonds authorized by Section 63B-16-101 have been  
5056 paid off and the highway projects completed that are included in the prioritized project list  
5057 under Subsection (4), the Division of Finance shall transfer any existing balance in the fund  
5058 into the Transportation Investment Fund of 2005 created by Section 72-2-124.

5059 (6) (a) The Division of Finance shall monitor the general obligation bonds authorized  
5060 by Section 63B-16-101.

5061 (b) The department shall monitor the highway construction or reconstruction projects  
5062 that are included in the prioritized project list under Subsection (4).

5063 (c) Upon request by the Executive Appropriations Committee of the Legislature:

5064 (i) the Division of Finance shall report to the committee the status of all general  
5065 obligation bonds issued under Section 63B-16-101; and

5066 (ii) the department shall report to the committee the status of all highway construction  
5067 or reconstruction projects that are included in the prioritized project list under Subsection (4).

5068 (d) When the Division of Finance has reported that the general obligation bonds issued  
5069 by Section 63B-16-101 have been paid off and the department has reported that projects  
5070 included in the prioritized project list are complete to the Executive Appropriations Committee  
5071 of the Legislature, the Division of Finance shall transfer any existing fund balance in  
5072 accordance with Subsection (5).

5073 Section 83. **Repealer.**

5074 This bill repeals:

5075 Section **59-10-206, Character of state taxable income of nonresident estate or trust.**

5076 Section **59-10-801, Taxation of limited liability companies.**

5077 Section **59-10-1201, Title.**

5078 Section **59-10-1202, Definitions.**

5079 Section **59-10-1203, Single rate tax for resident or nonresident individual -- Tax**  
 5080 **rate -- Contributions -- Exemption -- Amended returns.**

5081 Section **59-10-1204, Additions to and subtractions from adjusted gross income of a**  
 5082 **resident or nonresident individual.**

5083 Section **59-10-1205, Adjustments to adjusted gross income of a resident or**  
 5084 **nonresident individual.**

5085 Section **59-10-1206, Tax credits.**

5086 Section **59-10-1207, Administration, collection, and enforcement of tax.**

5087 Section 84. **Retrospective operation -- Effective date.**

5088 (1) Except as provided in Subsection (2), this bill has retrospective operation for  
 5089 taxable years beginning on or after January 1, 2008.

5090 (2) The amendments to the following sections take effect on January 1, 2009:

5091 (a) Section 59-12-103;

5092 (b) Section 59-12-104;

5093 (c) Section 59-12-902;

5094 (d) Section 72-2-107;

5095 (e) Section 72-2-124; and

5096 (f) Section 72-2-125.

5097 Section 85. **Coordinating H.B. 359 with H.B. 158 -- Modifying substantive**  
 5098 **language.**

5099 If this H.B. 359 and H.B. 158, Tax Credit for Military Retired Pay, both pass, it is the  
 5100 intent of the Legislature that the Office of Legislative Research and General Counsel, in  
 5101 preparing the Utah Code database for publication, modify Section 59-10-1002.2, which is  
 5102 renumbered and amended in this H.B. 359, so that a citation to the statutory section enacted in  
 5103 Section 1 in H.B. 158 is included in the list of sections in:

5104 (1) Subsection 59-10-1002.2(1); and

5105 (2) Subsection 59-10-1002.2(2).

5106 Section 86. **Coordinating H.B. 359 with H.B. 199 -- Modifying substantive**  
 5107 **language.**

5108 If this H.B. 359 and H.B. 199, Tax Credits for Energy Efficient Residences, both pass,  
 5109 it is the intent of the Legislature that the Office of Legislative Research and General Counsel,

5110 in preparing the Utah Code database for publication, modify Section 59-10-1002.2, which is  
5111 renumbered and amended in this H.B. 359, so that citations to the statutory sections enacted in  
5112 Sections 3 and 4 in H.B. 199 are included in the list of sections in:

5113 (1) Subsection 59-10-1002.2(1); and

5114 (2) Subsection 59-10-1002.2(2).

5115 **Section 87. Coordinating H.B. 359 with H.B. 279 -- Modifying substantive**  
5116 **language.**

5117 If this H.B. 359 and H.B. 279, Tax Incentives for Military Members, both pass, it is the  
5118 intent of the Legislature that the Office of Legislative Research and General Counsel, in  
5119 preparing the Utah Code database for publication, modify Section 59-10-1002.2, which is  
5120 renumbered and amended in this H.B. 359, so that a citation to the statutory section enacted in  
5121 Section 4 in H.B. 279 is included in the list of sections in:

5122 (1) Subsection 59-10-1002.2(1); and

5123 (2) Subsection 59-10-1002.2(2).

5124 **Section 88. Coordinating H.B. 359 with H.B. 351 -- Modifying substantive**  
5125 **language.**

5126 If this H.B. 359 and H.B. 351, Individual Income Tax - Health Insurance, both pass, it  
5127 is the intent of the Legislature that the Office of Legislative Research and General Counsel, in  
5128 preparing the Utah Code database for publication, modify Section 59-10-1002.2, which is  
5129 renumbered and amended in this H.B. 359, so that a citation to the statutory section enacted in  
5130 Section 3 in H.B. 351 is included in the list of sections in Subsection 59-10-1002.2(1).

5131 **Section 89. Coordinating H.B. 359 with H.B. 360 -- Modifying substantive**  
5132 **language.**

5133 If this H.B. 359 and H.B. 360, Individual Income Tax - Long-term Care Insurance  
5134 Premiums, both pass, it is the intent of the Legislature that the Office of Legislative Research  
5135 and General Counsel, in preparing the Utah Code database for publication, modify Section  
5136 59-10-1002.2, which is renumbered and amended in this H.B. 359, so that a citation to the  
5137 statutory section enacted in Section 3 in H.B. 360 is included in the list of sections in  
5138 Subsection 59-10-1002.2(1).

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**H.B. 359 3rd Sub. (Cherry) - Tax Changes**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill could reduce the General Fund by \$958,000 for FY 2009 and by \$1,958,000 in FY 2010. The Education Fund could decrease by \$2,400,000 in FY 2009 and by \$21,750,000 in FY 2010. Restricted Funds are expected to increase by \$10,731,500 in FY 2009 and by \$21,870,000 in FY 2010. Restricted Funds are earmarked for transportation chokepoints, and the Critical Needs Highway Fund.

|                                | <u>FY 2008</u><br><u>Approp.</u> | <u>FY 2009</u><br><u>Approp.</u> | <u>FY 2010</u><br><u>Approp.</u> | <u>FY 2008</u><br><u>Revenue</u> | <u>FY 2009</u><br><u>Revenue</u> | <u>FY 2010</u><br><u>Revenue</u> |
|--------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| General Fund                   | \$0                              | \$0                              | \$0                              | \$0                              | (\$958,000)                      | (\$1,958,000)                    |
| Education Fund                 | \$0                              | \$0                              | \$0                              | \$0                              | (\$2,400,000)                    | (\$21,750,000)                   |
| Transportation Fund Restricted | \$0                              | \$0                              | \$0                              | \$0                              | \$10,731,500                     | \$21,870,000                     |
| <b>Total</b>                   | <b>\$0</b>                       | <b>\$0</b>                       | <b>\$0</b>                       | <b>\$0</b>                       | <b>\$7,373,500</b>               | <b>(\$1,838,000)</b>             |

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Certain individual and businesses could see decreased income tax payments while others could see slight gains. Both businesses and individuals will experience increases in sales tax paid.