

Representative James A. Dunnigan proposes the following substitute bill:

**INDIVIDUAL INCOME TAX - HEALTH
INSURANCE**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill amends the Individual Income Tax Act to address a subtraction and tax credit for certain health insurance.

Highlighted Provisions:

This bill:

- ▶ repeals an income tax subtraction for health care insurance;
- ▶ defines terms;
- ▶ enacts a nonrefundable tax credit for certain amounts paid for insurance under a health benefit plan;
- ▶ grants rulemaking authority to the Department of Insurance; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for taxable years beginning on or after January 1, 2008.

This bill coordinates with S.B. 31, Income Tax Amendments, to provide for



26 apportionment of a tax credit.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **59-10-103**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2

30 **59-10-114**, as last amended by Laws of Utah 2007, Chapter 100

31 **59-10-1204**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2

32 ENACTS:

33 **59-10-1017**, Utah Code Annotated 1953



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

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

37 **59-10-103. Definitions.**

38 (1) As used in this chapter:

39 (a) "Adjusted gross income":

40 (i) for a resident or nonresident individual, is as defined in Section 62, Internal
41 Revenue Code; or

42 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),
43 Internal Revenue Code.

44 (b) "Adoption expenses" means:

45 (i) any actual medical and hospital expenses of the mother of the adopted child which
46 are incident to the child's birth;

47 (ii) any welfare agency fees or costs;

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

49 (iv) any legal fees or costs; or

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

51 (c) "Adult with a disability" means an individual who:

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

53 (ii) is eligible for services under Title 62A, Chapter 5, Services for People with
54 Disabilities; and

55 (iii) is not enrolled in:

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

57 53A-15-301; or

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

59 (d) (i) For purposes of Subsection 59-10-114(2)[~~(j)~~](k), "capital gain transaction"

60 means a transaction that results in a:

61 (A) short-term capital gain; or

62 (B) long-term capital gain.

63 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
64 the commission may by rule define the term "transaction."

65 (e) "Commercial domicile" means the principal place from which the trade or business
66 of a Utah small business corporation is directed or managed.

67 (f) "Corporation" includes:

68 (i) associations;

69 (ii) joint stock companies; and

70 (iii) insurance companies.

71 (g) "Dependent child with a disability" means an individual 21 years of age or younger
72 who:

73 (i) (A) is diagnosed by a school district representative under rules adopted by the State
74 Board of Education as having a disability classified as:

75 (I) autism;

76 (II) deafness;

77 (III) preschool developmental delay;

78 (IV) dual sensory impairment;

79 (V) hearing impairment;

80 (VI) intellectual disability;

81 (VII) multidisability;

82 (VIII) orthopedic impairment;

83 (IX) other health impairment;

84 (X) traumatic brain injury; or

85 (XI) visual impairment;

86 (B) is not receiving residential services from:

87 (I) the Division of Services for People with Disabilities created under Section

88 62A-5-102; or
89 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
90 and
91 (C) is enrolled in:
92 (I) an education program for students with disabilities that is authorized under Section
93 53A-15-301; or
94 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
95 or
96 (ii) is identified under guidelines of the Department of Health as qualified for:
97 (A) Early Intervention; or
98 (B) Infant Development Services.
99 (h) "Distributable net income" is as defined in Section 643, Internal Revenue Code.
100 (i) "Employee" is as defined in Section 59-10-401.
101 (j) "Employer" is as defined in Section 59-10-401.
102 (k) "Federal taxable income":
103 (i) for a resident or nonresident individual, means taxable income as defined by Section
104 63, Internal Revenue Code; or
105 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
106 (b), Internal Revenue Code.
107 (l) "Fiduciary" means:
108 (i) a guardian;
109 (ii) a trustee;
110 (iii) an executor;
111 (iv) an administrator;
112 (v) a receiver;
113 (vi) a conservator; or
114 (vii) any person acting in any fiduciary capacity for any individual.
115 (m) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
116 homesteaded land that was held to have been diminished from the Uintah and Ouray
117 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).
118 (n) "Individual" means a natural person and includes aliens and minors.

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

123 (p) For purposes of Subsection 59-10-114(2)(~~h~~)(k), "long-term capital gain" is as
124 defined in Section 1222, Internal Revenue Code.

125 (q) "Nonresident individual" means an individual who is not a resident of this state.

126 (r) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
127 resident estate or trust.

128 (s) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
129 unincorporated organization:

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

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

133 (I) a trust;

134 (II) an estate; or

135 (III) a corporation.

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

138 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
139 organization described in Subsection (1)(s)(i).

140 (t) "Qualifying military servicemember" means a member of:

141 (i) The Utah Army National Guard;

142 (ii) The Utah Air National Guard; or

143 (iii) the following if the member is assigned to a unit that is located in the state:

144 (A) The Army Reserve;

145 (B) The Naval Reserve;

146 (C) The Air Force Reserve;

147 (D) The Marine Corps Reserve; or

148 (E) The Coast Guard Reserve.

149 (u) "Qualifying stock" means stock that is:

- 150 (i) (A) common; or
151 (B) preferred;
152 (ii) as defined by the commission by rule, originally issued to:
153 (A) a resident or nonresident individual; or
154 (B) a partnership if the resident or nonresident individual making a subtraction from
155 federal taxable income in accordance with Subsection 59-10-114(2)(~~†~~)(k):
156 (I) was a partner when the stock was issued; and
157 (II) remains a partner until the last day of the taxable year for which the resident or
158 nonresident individual makes the subtraction from federal taxable income in accordance with
159 Subsection 59-10-114(2)(~~†~~)(k); and
160 (iii) issued:
161 (A) by a Utah small business corporation;
162 (B) on or after January 1, 2003; and
163 (C) for:
164 (I) money; or
165 (II) other property, except for stock or securities.
166 (v) (i) "Resident individual" means:
167 (A) an individual who is domiciled in this state for any period of time during the
168 taxable year, but only for the duration of the period during which the individual is domiciled in
169 this state; or
170 (B) an individual who is not domiciled in this state but:
171 (I) maintains a permanent place of abode in this state; and
172 (II) spends in the aggregate 183 or more days of the taxable year in this state.
173 (ii) For purposes of Subsection (1)(v)(i)(B), a fraction of a calendar day shall be
174 counted as a whole day.
175 (w) "Resident estate" or "resident trust" is as defined in Section 75-7-103.
176 (x) For purposes of Subsection 59-10-114(2)(~~†~~)(k), "short-term capital gain" is as
177 defined in Section 1222, Internal Revenue Code.
178 (y) "Taxable income" or "state taxable income":
179 (i) subject to Subsection 59-10-302(2), for a resident individual other than a resident
180 individual described in Subsection (1)(y)(iii), means the resident individual's federal taxable

181 income after making the:

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

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

184 (ii) for a nonresident individual other than a nonresident individual described in

185 Subsection (1)(y)(iii), is as defined in Section 59-10-116;

186 (iii) for a resident or nonresident individual that collects and pays a tax described in

187 Part 12, Single Rate Individual Income Tax Act, is as defined in Section 59-10-1202;

188 (iv) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

189 (v) for a nonresident estate or trust, is as calculated under Section 59-10-204.

190 (z) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or trust,

191 whose income is subject in whole or part to the tax imposed by this chapter.

192 (aa) "Uintah and Ouray Reservation" means the lands recognized as being included

193 within the Uintah and Ouray Reservation in:

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

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

196 (bb) (i) "Utah small business corporation" means a corporation that:

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

199 (B) except as provided in Subsection (1)(bb)(ii), meets the requirements of Section
200 1244(c)(1)(C), Internal Revenue Code; and

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

202 (ii) Notwithstanding Subsection (1)(bb)(i)(B), the time period described in Section

203 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a

204 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the

205 resident or nonresident individual makes a subtraction from federal taxable income in

206 accordance with Subsection 59-10-114(2)(~~h~~)(k).

207 (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute

208 Indian Tribe of the Uintah and Ouray Reservation.

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

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

211 (2) (a) Any term used in this chapter has the same meaning as when used in

212 comparable context in the laws of the United States relating to federal income taxes unless a
213 different meaning is clearly required.

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

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

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

222 **59-10-114. Additions to and subtractions from federal taxable income of an**
223 **individual.**

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

226 (a) the amount of any income tax imposed by this or any predecessor Utah individual
227 income tax law and the amount of any income tax imposed by the laws of another state, the
228 District of Columbia, or a possession of the United States, to the extent deducted from adjusted
229 gross income in determining federal taxable income;

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

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

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

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

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

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

242 (i) the resident or nonresident individual did not deduct or include the amounts on the

243 resident or nonresident individual's federal individual income tax return pursuant to Section
244 220, Internal Revenue Code;

245 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and
246 (iii) the withdrawal is deducted by the resident or nonresident individual under
247 Subsection (2)~~(f)~~(g);

248 (f) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
249 Incentive Program, from the account of a resident or nonresident individual who is an account
250 owner as defined in Section 53B-8a-102, for the taxable year for which the amount is
251 withdrawn, if that amount withdrawn from the account of the resident or nonresident individual
252 who is the account owner:

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

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

256 (I) who is the account owner; and
257 (II) in accordance with Subsection (2)~~(f)~~(h); or
258 (B) used as the basis for the resident or nonresident individual who is the account
259 owner to claim a tax credit under Section 59-10-1206.1;

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

264 (i) a state other than this state;
265 (ii) the District of Columbia;
266 (iii) a political subdivision of a state other than this state; or
267 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
268 (iii);

269 (h) subject to Subsection (2)~~(f)~~(m), any distribution received by a resident
270 beneficiary of a resident trust of income that was taxed at the trust level for federal tax
271 purposes, but was subtracted from state taxable income of the trust pursuant to Subsection
272 59-10-202(2)(c);

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

274 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
275 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
276 was not taxed at the trust level by any state, with undistributed distributable net income
277 considered to be distributed from the most recently accumulated undistributed distributable net
278 income; and

279 (j) any adoption expense:

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

282 (ii) to the extent to which the resident or nonresident individual deducts that adoption
283 expense:

284 (A) under Subsection (2)(c); or

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

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

288 (a) the interest or a dividend on obligations or securities of the United States and its
289 possessions or of any authority, commission, or instrumentality of the United States, to the
290 extent that interest or dividend is included in gross income for federal income tax purposes for
291 the taxable year but exempt from state income taxes under the laws of the United States, but
292 the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on
293 indebtedness incurred or continued to purchase or carry the obligations or securities described
294 in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend
295 income described in this Subsection (2)(a) to the extent that such expenses, including
296 amortizable bond premiums, are deductible in determining federal taxable income;

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

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

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

304 (A) paid; or

305 (B) incurred;

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

307 (iii) any year in which the resident or nonresident individual may claim the federal

308 adoption expenses credit under Section 23, Internal Revenue Code;

309 (d) amounts received by taxpayers under age 65 as retirement income which, for

310 purposes of this section, means pensions and annuities, paid from an annuity contract

311 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),

312 Internal Revenue Code, or purchased by an employee under a plan which meets the

313 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or

314 political subdivision thereof, or the District of Columbia, to the employee involved or the

315 surviving spouse;

316 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500

317 personal retirement exemption;

318 (f) 75% of the amount of the personal exemption, as defined and calculated in the

319 Internal Revenue Code, for each dependent child with a disability and adult with a disability

320 who is claimed as a dependent on a taxpayer's return;

321 ~~[(g) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the~~

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

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

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

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

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

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

328 ~~213, Internal Revenue Code, in determining federal taxable income for the taxable year;]~~

329 ~~[(h)]~~ (g) (i) except as provided in this Subsection (2)~~[(h)]~~(g), the amount of a

330 contribution made during the taxable year on behalf of the taxpayer to a medical care savings

331 account and interest earned on a contribution to a medical care savings account established

332 pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the

333 contribution is accepted by the account administrator as provided in the Medical Care Savings

334 Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal

335 individual income tax return pursuant to Section 220, Internal Revenue Code; and

336 (ii) a contribution deductible under this Subsection (2)~~(h)~~(g) may not exceed either of
337 the following:

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

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

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

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

346 ~~(i)~~ (h) subject to Subsection (1)(f), the amount of a qualified investment as defined in
347 Section 53B-8a-102 that:

348 (i) a resident or nonresident individual who is an account owner as defined in Section
349 53B-8a-102 makes during the taxable year;

350 (ii) the resident or nonresident individual described in Subsection (2)(i)(i) does not
351 deduct on a federal individual income tax return; and

352 (iii) does not exceed the maximum amount of the qualified investment that may be
353 subtracted from federal taxable income for a taxable year in accordance with Subsections
354 53B-8a-106(1)(e) and (f);

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

359 ~~(k)~~ (j) for taxable years beginning on or after January 1, 2000, if the conditions of
360 Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

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

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

364 ~~(l)~~ (k) (i) for taxable years beginning on or after January 1, 2003, the total amount of
365 a resident or nonresident individual's short-term capital gain or long-term capital gain on a
366 capital gain transaction:

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

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

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

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

371 and

372 (C) if, prior to the purchase of the qualifying stock described in Subsection

373 (2)~~(f)~~(k)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in

374 the Utah small business corporation that issued the qualifying stock; and

375 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

376 commission may make rules:

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

378 (B) for purposes of Subsection (2)~~(f)~~(k)(i)(C), prescribing the circumstances under

379 which a resident or nonresident individual has an ownership interest in a Utah small business

380 corporation;

381 ~~(m)~~ (l) for the taxable year beginning on or after January 1, 2005, but beginning on or

382 before December 31, 2005, the first \$2,200 of income a qualifying military servicemember

383 receives:

384 (i) for service:

385 (A) as a qualifying military servicemember; or

386 (B) under an order into active service in accordance with Section 39-1-5; and

387 (ii) to the extent that income is included in adjusted gross income on that resident or

388 nonresident individual's federal individual income tax return for that taxable year;

389 ~~(n)~~ (m) an amount received by a resident or nonresident individual or distribution

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

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

392 (A) a state; or

393 (B) the District of Columbia; and

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

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

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

397 ~~(o)~~ (n) the amount of a railroad retirement benefit:

398 (i) paid:
399 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
400 seq.;

401 (B) to a resident or nonresident individual; and
402 (C) for the taxable year; and

403 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
404 that resident or nonresident individual's federal individual income tax return for that taxable
405 year; and

406 [~~(p)~~] (o) an amount:
407 (i) received by an enrolled member of an American Indian tribe; and
408 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
409 part on that amount in accordance with:

410 (A) federal law;
411 (B) a treaty; or
412 (C) a final decision issued by a court of competent jurisdiction.

413 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
414 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
415 \$4,800, except that:

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

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

422 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
423 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
424 reduced by 50 cents.

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

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

429 cents;

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

433 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
434 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

445 ~~[(i) for an amount that is reimbursed or funded in whole or in part by the federal~~
446 ~~government, the state, or an agency or instrumentality of the federal government or the state;~~
447 ~~and]~~

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

450 (4) (a) A subtraction for an amount described in Subsection (2)~~(k)~~(j) is allowed only
451 if:

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

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

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

456 (i) may not:

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

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

459 subtraction described in Subsection (2)~~(k)~~(j); or

460 (C) affect the power of the state to establish rates of taxation; and
461 (ii) shall:
462 (A) provide for the implementation of the subtraction described in Subsection
463 (2)(~~(k)~~)(j);
464 (B) be in writing;
465 (C) be signed by:
466 (I) the governor; and
467 (II) the chair of the Business Committee of the Ute tribe;
468 (D) be conditioned on obtaining any approval required by federal law; and
469 (E) state the effective date of the agreement.
470 (c) (i) The governor shall report to the commission by no later than February 1 of each
471 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
472 in effect.
473 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
474 subtraction permitted under Subsection (2)(~~(k)~~)(j) is not allowed for taxable years beginning on
475 or after the January 1 following the termination of the agreement.
476 (d) For purposes of Subsection (2)(~~(k)~~)(j) and in accordance with Title 63, Chapter 46a,
477 Utah Administrative Rulemaking Act, the commission may make rules:
478 (i) for determining whether income is derived from a source within the Uintah and
479 Ouray Reservation; and
480 (ii) that are substantially similar to how adjusted gross income derived from Utah
481 sources is determined under Section 59-10-117.
482 (5) (a) For purposes of this Subsection (5), "Form 8814" means:
483 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
484 Interest and Dividends; or
485 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
486 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
487 2000 Form 8814 if for purposes of federal individual income taxes the information contained
488 on 2000 Form 8814 is reported on a form other than Form 8814; and
489 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
490 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form

491 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
492 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
493 8814.

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

496 (i) the lesser of:

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

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

499 (I) the child's taxable interest;

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

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

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

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

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

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

513 (i) the entity; or

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

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

516 Section 3. Section **59-10-1017** is enacted to read:

517 **59-10-1017. Nonrefundable tax credit for amounts paid under a health benefit**
518 **plan.**

519 (1) As used in this section:

520 (a) "Claimant with dependents" means a claimant:

521 (i) regardless of the claimant's filing status for purposes of filing a federal individual

522 income tax return for the taxable year; and
523 (ii) who claims one or more dependents under Section 151, Internal Revenue Code, as
524 allowed on the claimant's federal individual income tax return for the taxable year.
525 (b) "Eligible insured individual" means:
526 (i) the claimant who is insured under a health benefit plan;
527 (ii) the spouse of the claimant described in Subsection (1)(b)(i) if:
528 (A) the claimant files a single federal individual income tax return jointly with the
529 claimant's spouse; and
530 (B) the spouse is insured under the health benefit plan described in Subsection
531 (1)(b)(i); or
532 (iii) a dependent of the claimant described in Subsection (1)(b)(i) if:
533 (A) the claimant claims the dependent under Section 151, Internal Revenue Code, as
534 allowed on the claimant's federal individual income tax return for the taxable year; and
535 (B) the dependent is insured under the health benefit plan described in Subsection
536 (1)(b)(i).
537 (c) "Excluded expenses" means an amount a claimant pays for insurance offered under
538 a health benefit plan for a taxable year if:
539 (i) the claimant claims a tax credit for that amount under Section 35, Internal Revenue
540 Code:
541 (A) on the claimant's federal individual income tax return for the taxable year; and
542 (B) with respect to an eligible insured individual;
543 (ii) the claimant deducts that amount under Section 162 or 213, Internal Revenue
544 Code:
545 (A) on the claimant's federal individual income tax return for the taxable year; and
546 (B) with respect to an eligible insured individual; or
547 (iii) the claimant excludes that amount from gross income under Section 106 or 125,
548 Internal Revenue Code, with respect to an eligible insured individual.
549 (d) (i) "Health benefit plan" is as defined in Section 31A-1-301.
550 (ii) "Health benefit plan" does not include equivalent self-insurance as defined by the
551 Insurance Department by rule made in accordance with Title 63, Chapter 46a, Utah
552 Administrative Rulemaking Act.

553 (e) "Joint claimant with no dependents" means:
554 (i) a husband and wife who:
555 (A) file a single federal individual income tax return jointly for the taxable year; and
556 (B) do not claim a dependent under Section 151, Internal Revenue Code, on the
557 husband's and wife's federal individual income tax return for the taxable year; or
558 (ii) a surviving spouse, as defined in Section 2(a), Internal Revenue Code, who:
559 (A) files a single federal individual income tax return for the taxable year; and
560 (B) does not claim a dependent under Section 151, Internal Revenue Code, on the
561 surviving spouse's federal individual income tax return for the taxable year.
562 (f) "Single claimant with no dependents" means:
563 (i) a single individual who:
564 (A) files a single federal individual income tax return for the taxable year; and
565 (B) does not claim a dependent under Section 151, Internal Revenue Code, on the
566 single individual's federal individual income tax return for the taxable year;
567 (ii) a head of household:
568 (A) as defined in Section 2(b), Internal Revenue Code, who files a single federal
569 individual income tax return for the taxable year; and
570 (B) who does not claim a dependent under Section 151, Internal Revenue Code, on the
571 head of household's federal individual income tax return for the taxable year; or
572 (iii) a married individual who:
573 (A) does not file a single federal individual income tax return jointly with that married
574 individual's spouse for the taxable year; and
575 (B) does not claim a dependent under Section 151, Internal Revenue Code, on that
576 married individual's federal individual income tax return for the taxable year.
577 (2) Subject to Subsection (3), and except as provided in Subsection (4), for taxable
578 years beginning on or after January 1, 2008, a claimant may claim a nonrefundable tax credit
579 equal to the product of:
580 (a) the difference between:
581 (i) the total amount the claimant pays during the taxable year for:
582 (A) insurance offered under a health benefit plan; and
583 (B) an eligible insured individual; and

- 584 (ii) excluded expenses; and
585 (b) 5%.
586 (3) The maximum amount of a tax credit described in Subsection (2) a claimant may
587 claim for a taxable year is:
588 (a) for a single claimant with no dependents, \$300;
589 (b) for a joint claimant with no dependents, \$600; or
590 (c) for a claimant with dependents, \$900.
591 (4) A claimant may not claim a tax credit under this section if the claimant is eligible to
592 participate in insurance offered under a health benefit plan maintained and funded in whole or
593 in part by:
594 (a) the claimant's employer; or
595 (b) another person's employer.
596 (5) A claimant may not carry forward or carry back a tax credit under this section.
597 Section 4. Section **59-10-1204** is amended to read:

598 **59-10-1204. Additions to and subtractions from adjusted gross income of a**
599 **resident or nonresident individual.**

- 600 (1) In calculating state taxable income for purposes of this part, the following amounts
601 shall be added to the adjusted gross income of a resident or nonresident individual:
602 (a) the amount described in Subsection 59-10-114(1)(a), if that amount is deducted by
603 a resident or nonresident estate or trust in determining federal taxable income;
604 (b) the lump sum distribution described in Subsection 59-10-114(1)(b);
605 (c) subject to Subsection 59-10-114(5), the amount described in Subsection
606 59-10-114(1)(c);
607 (d) a withdrawal described in Subsection 59-10-114(1)(e);
608 (e) the amount described in Subsection 59-10-114(1)(f);
609 (f) subject to Subsection 59-10-114(6), the interest described in Subsection
610 59-10-114(1)(g);
611 (g) a distribution described in Subsection 59-10-114(1)(h);
612 (h) a distribution described in Subsection 59-10-114(1)(i); or
613 (i) an expense described in Subsection 59-10-114(1)(j).
614 (2) In calculating state taxable income for purposes of this part, the following amounts

615 shall be subtracted from the adjusted gross income of a resident or nonresident individual:

616 (a) the interest or dividends described in Subsection 59-10-114(2)(a);

617 (b) subject to Subsection 59-10-114(4), the amount described in Subsection

618 59-10-114(2)~~(k)~~(j);

619 (c) an amount described in Subsection 59-10-114(2)~~(n)~~(m);

620 (d) the amount described in Subsection 59-10-114(2)~~(o)~~(n); and

621 (e) an amount described in Subsection 59-10-114(2)~~(p)~~(o).

622 **Section 5. Retrospective operation.**

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

624 2008.

625 **Section 6. Coordinating H.B. 351 with S.B. 31 -- Modifying substantive language.**

626 If this H.B. 351 and S.B. 31, Income Tax Amendments, both pass, it is the intent of the

627 Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah

628 Code database for publication, modify Section 59-10-1002.2, which is renumbered and

629 amended in S.B. 31, so that a citation to the statutory section enacted in Section 3 in this H.B.

630 351 is included in the list of sections in Subsection 59-10-1002.2(1).