

Senator Wayne L. Niederhauser proposes the following substitute bill:

INCOME TAXATION AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: John Dougall

LONG TITLE

General Description:

This bill amends the Corporate Franchise and Income Taxes chapter, the Individual Income Tax Act, and related provisions to address the income taxation of individuals, estates, and trusts, including real estate investment trusts.

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;
 - addressing the taxation of a nonresident individual or part-year resident individual; and
 - addressing provisions relating to the determination and reporting of income tax



26 liability and information;

27 ▶ addresses the apportionment of business income for purposes of the individual
28 income tax;

29 ▶ modifies the income taxation of estates and trusts, including:

- 30 • providing definitions;
- 31 • providing that the tax is calculated on the basis of unadjusted income;
- 32 • modifying additions to and subtractions from unadjusted income; and
- 33 • addressing provisions relating to the determination and reporting of income tax

34 liability and information;

35 ▶ addresses the taxation of pass-through entities, including:

- 36 • providing definitions; and
- 37 • renumbering and amending provisions relating to pass-through entities;
- 38 ▶ rennumbers and amends provisions relating to tax credits, including tax credits for:
 - 39 • a taxpayer;
 - 40 • an investment in the Utah Educational Savings Plan Trust; or
 - 41 • retirement income;

42 ▶ provides nonrefundable tax credits for:

- 43 • a trust or estate;
- 44 • a contribution to a medical care savings account; or
- 45 • capital gain transactions;

46 ▶ modifies the refundable renewable energy tax credit to clarify that an estate or trust
47 may claim the tax credit;

48 ▶ addresses the apportionment of tax credits;

49 ▶ addresses the following relating to a medical care savings account:

- 50 • taxation;
- 51 • penalties; and
- 52 • interest;

53 ▶ amends provisions relating to the taxation of an investment in the Utah Educational
54 Savings Plan Trust;

55 ▶ rennumbers and amends the individual income tax contribution provisions;

56 ▶ addresses the administration of income tax contributions;

- 57 ▶ grants rulemaking authority to the State Tax Commission; and
- 58 ▶ makes technical changes.

59 **Monies Appropriated in this Bill:**

60 None

61 **Other Special Clauses:**

62 This bill has retrospective operation for taxable years beginning on or after January 1,
63 2008.

64 **Utah Code Sections Affected:**

65 AMENDS:

66 **9-4-802**, as last amended by Laws of Utah 2003, Chapter 132

67 **9-4-803**, as last amended by Laws of Utah 2003, Chapter 132

68 **23-14-13**, as last amended by Laws of Utah 1995, Chapter 211

69 **23-14-14.1**, as enacted by Laws of Utah 2003, Chapter 162

70 **26-18a-3**, as last amended by Laws of Utah 1997, Chapter 1

71 **26-18a-4**, as last amended by Laws of Utah 1997, Chapter 1

72 **26-48-102**, as enacted by Laws of Utah 2006, Chapter 280

73 **31A-32a-101**, as enacted by Laws of Utah 1999, Chapter 131

74 **31A-32a-103**, as enacted by Laws of Utah 1999, Chapter 131

75 **31A-32a-104**, as enacted by Laws of Utah 1999, Chapter 131

76 **31A-32a-105**, as enacted by Laws of Utah 1999, Chapter 131

77 **31A-32a-106**, as last amended by Laws of Utah 2001, Chapter 53

78 **31A-32a-107**, as enacted by Laws of Utah 1999, Chapter 131

79 **48-2c-117**, as enacted by Laws of Utah 2001, Chapter 260

80 **53B-8a-106**, as last amended by Laws of Utah 2007, Chapter 100

81 **59-7-101**, as last amended by Laws of Utah 2004, Chapter 54

82 **59-7-105**, as last amended by Laws of Utah 2007, Chapter 100

83 **59-7-106**, as last amended by Laws of Utah 2007, Chapter 100

84 **59-7-116.5**, as enacted by Laws of Utah 1995, Chapter 311

85 **59-7-402**, as last amended by Laws of Utah 2004, Chapter 54

86 **59-10-103**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2

87 **59-10-104**, as last amended by Laws of Utah 2007, Chapter 288

- 88 **59-10-104.1**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 89 **59-10-110**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 90 **59-10-114**, as last amended by Laws of Utah 2007, Chapter 100
- 91 **59-10-115**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 92 **59-10-116**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 93 **59-10-117**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 94 **59-10-118**, as last amended by Laws of Utah 1995, Chapter 311
- 95 **59-10-119**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 96 **59-10-120**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 97 **59-10-121**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 98 **59-10-122**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 99 **59-10-123**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 100 **59-10-124**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 101 **59-10-125**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 102 **59-10-126**, as last amended by Laws of Utah 1995, Chapter 311
- 103 **59-10-201**, as last amended by Laws of Utah 2007, Chapter 100
- 104 **59-10-201.1**, as last amended by Laws of Utah 2006, Chapter 223
- 105 **59-10-202**, as last amended by Laws of Utah 2007, Chapter 100
- 106 **59-10-204**, as last amended by Laws of Utah 2006, Chapter 223
- 107 **59-10-205**, as last amended by Laws of Utah 2006, Chapter 223
- 108 **59-10-207**, as last amended by Laws of Utah 2006, Chapter 223
- 109 **59-10-209.1**, as enacted by Laws of Utah 2006, Chapter 223
- 110 **59-10-210**, as last amended by Laws of Utah 2006, Chapter 223
- 111 **59-10-507**, as last amended by Laws of Utah 2003, Chapter 198
- 112 **59-10-1106**, as enacted by Laws of Utah 2007, Chapter 288

113 ENACTS:

- 114 **59-10-1020**, Utah Code Annotated 1953
- 115 **59-10-1021**, Utah Code Annotated 1953
- 116 **59-10-1022**, Utah Code Annotated 1953
- 117 **59-10-1301**, Utah Code Annotated 1953
- 118 **59-10-1302**, Utah Code Annotated 1953

- 119 **59-10-1303**, Utah Code Annotated 1953
- 120 **59-10-1401**, Utah Code Annotated 1953
- 121 **59-10-1402**, Utah Code Annotated 1953
- 122 RENUMBERS AND AMENDS:
- 123 **59-10-1002.1**, (Renumbered from 59-10-1016, as renumbered and amended by Laws of
- 124 Utah 2006, Chapter 223)
- 125 **59-10-1002.2**, (Renumbered from 59-10-1206.9, as enacted by Laws of Utah 2007,
- 126 Chapter 288)
- 127 **59-10-1017**, (Renumbered from 59-10-1206.1, as enacted by Laws of Utah 2007,
- 128 Chapter 100)
- 129 **59-10-1018**, (Renumbered from 59-10-1206.2, as enacted by Laws of Utah 2007,
- 130 Chapter 288)
- 131 **59-10-1019**, (Renumbered from 59-10-1206.3, as enacted by Laws of Utah 2007,
- 132 Chapter 288)
- 133 **59-10-1304**, (Renumbered from 59-10-551, as last amended by Laws of Utah 2006,
- 134 Chapter 280)
- 135 **59-10-1305**, (Renumbered from 59-10-530, as last amended by Laws of Utah 1997,
- 136 Chapter 12)
- 137 **59-10-1306**, (Renumbered from 59-10-530.5, as last amended by Laws of Utah 2003,
- 138 Chapter 132)
- 139 **59-10-1307**, (Renumbered from 59-10-549, as last amended by Laws of Utah 2005,
- 140 Chapter 208)
- 141 **59-10-1308**, (Renumbered from 59-10-550, as last amended by Laws of Utah 1997,
- 142 Chapters 1 and 12)
- 143 **59-10-1309**, (Renumbered from 59-10-550.1, as enacted by Laws of Utah 2003,
- 144 Chapter 162)
- 145 **59-10-1310**, (Renumbered from 59-10-550.2, as enacted by Laws of Utah 2006,
- 146 Chapter 280)
- 147 **59-10-1311**, (Renumbered from 59-10-547, as last amended by Laws of Utah 1998,
- 148 Chapter 269)
- 149 **59-10-1312**, (Renumbered from 59-10-548, as last amended by Laws of Utah 2002,

- 150 Chapters 107 and 256)
- 151 **59-10-1403**, (Renumbered from 59-10-301, as renumbered and amended by Laws of
- 152 Utah 1987, Chapter 2)
- 153 **59-10-1404**, (Renumbered from 59-10-302, as renumbered and amended by Laws of
- 154 Utah 1987, Chapter 2)
- 155 **59-10-1405**, (Renumbered from 59-10-303, as last amended by Laws of Utah 2006,
- 156 Fourth Special Session, Chapter 2)
- 157 REPEALS:
- 158 **59-10-206**, as last amended by Laws of Utah 1995, Chapter 345
- 159 **59-10-801**, as last amended by Laws of Utah 1997, Chapter 159
- 160 **59-10-1201**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 161 **59-10-1202**, as last amended by Laws of Utah 2007, Chapters 100 and 288
- 162 **59-10-1203**, as last amended by Laws of Utah 2007, Chapters 100 and 288
- 163 **59-10-1204**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 164 **59-10-1205**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 165 **59-10-1206**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 166 **59-10-1207**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2

167

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

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

170 **9-4-802. Purposes of Homeless Coordinating Committee -- Uses of Pamela**
171 **Atkinson Homeless Trust Account.**

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

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

180 (c) The committee may also fund treatment programs to ameliorate the effects of

181 substance abuse or a disability.

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

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

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

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

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

192 (b) The committee may:

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

196 (ii) pay for the initial costs of the State Tax Commission in implementing Section
197 [~~59-10-530.5~~] 59-10-1306 from the account.

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

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

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

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

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

212 **9-4-803. Creation of Pamela Atkinson Homeless Trust Account.**

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

215 (2) Private contributions received under this section and Section [~~59-10-530.5~~]
216 59-10-1306 shall be deposited into the account to be used only for programs described in
217 Section 9-4-802.

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

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

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

223 **23-14-13. Wildlife Resources Account.**

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

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

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

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

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

235 (d) funds appropriated from the General Fund by the Legislature pursuant to Section
236 23-19-39;

237 (e) other monies received by the division under any provision of this title, except as
238 otherwise provided by this title; [~~and~~]

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

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

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

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

244 **23-14-14.1. Wolf Depredation and Management Restricted Account -- Interest --**
245 **Use of contributions and interest.**

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

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

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

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

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

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

257 (ii) wolf management.

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

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

262 **26-18a-3. Purpose of committee.**

263 (1) The committee shall work to:

264 (a) provide financial assistance for initial medical expenses of children who need organ
265 transplants;

266 (b) obtain the assistance of volunteer and public service organizations; and

267 (c) fund activities as the committee designates for the purpose of educating the public
268 about the need for organ donors.

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

271 (b) The financial assistance awarded by the committee under Subsection (1)(a) shall be
272 in the form of interest free loans. The committee may establish terms for repayment of the
273 loans, including a waiver of the requirement to repay any awards if, in the committee's

274 judgment, repayment of the loan would impose an undue financial burden on the recipient.

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

276 (i) need;

277 (ii) coordination with or enhancement of existing services or financial assistance,

278 including availability of insurance or other state aid;

279 (iii) the success rate of the particular organ transplant procedure needed by the child;

280 and

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

282 (3) The committee may only provide the assistance described in this section to children

283 who have resided in Utah, or whose legal guardians have resided in Utah for at least six months

284 prior to the date of assistance under this section.

285 (4) (a) The committee may expend up to 5% of its annual appropriation for

286 administrative costs associated with the allocation of funds from the trust account.

287 (b) The administrative costs shall be used for the costs associated with staffing the

288 committee and for State Tax Commission costs in implementing Section [~~59-10-550~~]

289 59-10-1308.

290 (5) The committee shall make an annual report to the Health and Human Services

291 Appropriations Subcommittee regarding the programs and services funded by contributions to

292 the trust account.

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

294 **26-18a-4. Creation of Kurt Oscarson Children's Organ Transplant Trust**

295 **Account.**

296 (1) There is created a restricted account within the General Fund pursuant to Section

297 51-5-4 known as the Kurt Oscarson Children's Organ Transplant Trust Account. Private

298 contributions received under this section and Section [~~59-10-550~~] 59-10-1308 shall be

299 deposited into the trust account to be used only for the programs and purposes described in

300 Section 26-18a-3.

301 (2) Money shall be appropriated from the trust account to the committee in accordance

302 with Title 63, Chapter 38, Budgetary Procedures Act.

303 (3) In addition to funds received under Section [~~59-10-550~~] 59-10-1308, the committee

304 may accept transfers, grants, gifts, bequests, or any money made available from any source to

305 implement this chapter.

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

307 **26-48-102. Cat and Dog Community Spay and Neuter Program Restricted**
308 **Account -- Interest -- Use of contributions and interest.**

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

311 (2) The account shall be funded by contributions deposited into the Cat and Dog
312 Community Spay and Neuter Program Restricted Account in accordance with Section
313 [~~59-10-550.2~~] 59-10-1310.

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

316 (b) Interest earned on the Cat and Dog Community Spay and Neuter Program
317 Restricted Account shall be deposited into the Cat and Dog Community Spay and Neuter
318 Program Restricted Account.

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

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

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

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

327 (i) to one or more communities in at least 20 counties in the state; and

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

329 and

330 (d) (i) spay and neuter cats and dogs owned by persons having low incomes; and

331 (ii) have established written guidelines for determining what constitutes a person
332 having a low income in accordance with any rules made by the department as authorized by
333 Subsection (5)(c).

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

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

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

339 (A) owned by persons having low incomes;

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

341 (C) through a statewide voucher program; and

342 (D) at a location that:

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

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

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

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

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

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

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

353 **31A-32a-101. Title and scope.**

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

355 (2) (a) This chapter applies only to a medical care savings [accounts] account
356 established for the purpose of seeking a tax [deduction] credit under Section [59-10-114]
357 59-10-1021.

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

361 Section 9. Section **31A-32a-103** is amended to read:

362 **31A-32a-103. Establishing medical care savings accounts.**

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

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

365 (a) an employer, except as otherwise provided by contract or a collective bargaining
366 agreement, may offer a medical care savings account program to the employer's employees;

367 [~~and~~] or

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

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

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

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

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

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

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

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

385 (4) Except as provided in Sections 31A-32a-105 and 59-10-114, principal contributed
386 to and interest earned on a medical care savings account and money reimbursed to an employee
387 or account holder for eligible medical expenses are exempt from taxation.

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

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

392 Section 10. Section ~~31A-32a-104~~ is amended to read:

393 **31A-32a-104. Administration of medical care savings account.**

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

397 (2) (a) Except as provided in Subsection 31A-32a-105(1), the account administrator

398 shall use the funds held in a medical care savings account solely for the purpose of paying or
399 reimbursing the employee or account holder for eligible medical expenses of the employee or
400 account holder or of the employee's or account holder's dependents.

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

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

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

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

415 **31A-32a-105. Withdrawals -- Termination -- Transfers.**

416 (1) Subject to Subsection (3), if the employee or account holder withdraws money for
417 any purpose other than a medical expense at any time in which the balance in the account is
418 below \$4,000 [~~all of the following apply~~]:

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

422 (b) the administrator shall withhold from the amount of the withdrawal, and on behalf
423 of the employee or account holder shall pay a penalty to the State Tax Commission equal to
424 10% of the amount of the withdrawal.

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

429 withdrawal:

430 (a) is not subject to the penalties described in Subsection (1)(b); and

431 [~~(b) is subject to taxation as provided in Subsection (1)(a).~~]

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

433 (3) The amount of a disbursement of any assets of a medical care savings account
434 pursuant to a filing for protection under [~~Title 11 of the United States Code,~~] 11 U.S.C. Sec.
435 101 to 1330, by an employee, account holder, or person for whose benefit the account was
436 established:

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

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

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

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

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

445 (5) (a) If an employee is no longer employed by an employer that participates in a
446 medical care savings account program, and if the employee's account is administered by the
447 employer's account administrator, the money in the medical care savings account may be used
448 for the benefit of the employee or the employee's dependents in accordance with this chapter,
449 and [~~remains exempt from taxation~~] may not be added to adjusted gross income under Section
450 59-10-114 if the employee, not more than 60 days after the employee's final day of
451 employment:

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

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

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

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

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

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

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

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

470 **31A-32a-106. Regulation of account administrators -- Administration of addition**
471 **to adjusted gross income and tax credit -- Rulemaking authority.**

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

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

476 (a) amounts required to be added to adjusted gross income in accordance with Sections
477 31A-32a-105 and 59-10-114; or

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

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

480 **31A-32a-107. Penalties for noncompliance with tax provisions.**

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

484 [~~(1)~~] (a) the civil penalties provided in Section 59-1-401; and

485 [~~(2)~~] (b) interest at the rate and in the manner provided in Section 59-1-402.

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

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

488 (i) an addition to income made in accordance with Section 59-10-114; or

489 (ii) a tax credit allowed by Section 59-10-1021; or

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

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

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

494 **48-2c-117. Taxation of limited liability companies.**

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

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

498 **53B-8a-106. Account agreements.**

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

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

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

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

510 (d) Subject to Subsection (1)(f), the maximum amount of a qualified investment that a
511 corporation that is an account owner may subtract from unadjusted income for a taxable year in
512 accordance with Title 59, Chapter 7, Corporate Franchise and Income Taxes, is [~~\$1,560~~]
513 \$1,650 for each individual beneficiary for the taxable year beginning on or after January 1,
514 [~~2006~~] 2008, but beginning on or before December 31, [~~2006~~] 2008.

515 (e) Subject to Subsection (1)(f), the maximum amount of a qualified investment that
516 may be [~~subtracted from federal taxable income of a resident or nonresident individual for a~~
517 ~~taxable year in accordance with Section 59-10-114, a resident or nonresident estate or trust for~~
518 ~~a taxable year in accordance with Section 59-10-202, or]~~ used as the basis for claiming a tax
519 credit [~~for a taxable year by a resident or nonresident individual~~] in accordance with Section
520 [~~59-10-1206.f~~] 59-10-1017, is:

521 (i) for a resident or nonresident estate or trust that is an account owner, [~~\$1,560~~] \$1,650

522 for each individual beneficiary for the taxable year beginning on or after January 1, [~~2006~~
523 2008, but beginning on or before December 31, [~~2006~~ 2008;

524 (ii) for a resident or nonresident individual that is an account owner, other than a
525 husband and wife who are account owners and file a single return jointly, [~~\$1,560~~ \$1,650 for
526 each individual beneficiary for the taxable year beginning on or after January 1, [~~2006~~ 2008,
527 but beginning on or before December 31, [~~2006~~ 2008]; or

528 (iii) for a husband and wife who are account owners and file a single return jointly,
529 [~~\$3,120~~ \$3,300 for each individual beneficiary:

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

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

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

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

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

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

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

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

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

550 (II) two.

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

553 Code.

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

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

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

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

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

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

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

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

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

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

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

577 (4) Each account agreement shall provide that:

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

580 (b) ~~[no]~~ any part of the money in any account may not be used as security for a loan;
581 and

582 (c) ~~[no]~~ an account owner may not borrow from the Utah Educational Savings Plan
583 Trust.

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

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

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

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

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

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

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

602 (8) Each account agreement shall provide that:

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

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

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

609 **59-7-101. Definitions.**

610 As used in this chapter:

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

613 (2) (a) "Affiliated group" means one or more chains of corporations that are connected
614 through stock ownership with a common parent corporation that meet the following

615 requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

646 (A) the voting power of a captive real estate investment trust; or
647 (B) the value of the shares or beneficial interests of a captive real estate investment
648 trust.

649 (b) "Controlling entity of a captive real estate investment trust" does not include:
650 (i) a real estate investment trust, except for a captive real estate investment trust;
651 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal
652 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real
653 estate investment trust; or

654 (iii) a foreign real estate investment trust.

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

657 ~~[(7)]~~ (8) (a) "Common ownership" means the direct or indirect control or ownership of
658 more than 50% of the outstanding voting stock of:

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

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

663 (iii) three or more corporations each of which is a member of a group of corporations
664 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

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

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

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

670 ~~[(6)]~~ (9) "Corporate return" or "return" includes a combined report.

671 ~~[(8)]~~ (10) "Corporation" includes:

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

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

676 ~~[(9)]~~ (11) "Dividend" means any distribution, including money or other type of

677 property, made by a corporation to its shareholders out of its earnings or profits accumulated
678 after December 31, 1930.

679 ~~[(10)]~~ (12) (a) "Doing business" includes any transaction in the course of its business
680 by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate
681 business in this state.

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

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

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

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

687 ~~[(11)]~~ (13) "Domestic corporation" means a corporation that is incorporated or
688 organized under the laws of this state.

689 ~~[(12)]~~ (14) (a) "Farmers' cooperative" means an association, corporation, or other
690 organization that is:

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

692 (I) farmers; or

693 (II) fruit growers; or

694 (B) an association, corporation, or other organization that is similar to an association,
695 corporation, or organization described in Subsection ~~[(12)]~~ (14)(a)(i)(A); and

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

697 (A) (I) market the products of members of the cooperative or the products of other
698 producers; and

699 (II) return to the members of the cooperative or other producers the proceeds of sales
700 less necessary marketing expenses on the basis of the quantity of the products of a member or
701 producer or the value of the products of a member or producer; or

702 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
703 other persons; and

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

705 ~~(14)~~(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or
706 other persons.

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

708 (14), the commission by rule, made in accordance with Title 63, Chapter 46a, Utah
709 Administrative Rulemaking Act, shall define:

710 (A) the terms:

711 (I) "member"; and

712 (II) "producer"; and

713 (B) what constitutes an association, corporation, or other organization that is similar to
714 an association, corporation, or organization described in Subsection [~~(12)~~] (14)(a)(i)(A).

715 (ii) The rules made under this Subsection [~~(12)~~] (14)(b) shall be consistent with the
716 filing requirements under federal law for a farmers' cooperative.

717 [~~(13)~~] (15) "Foreign corporation" means a corporation that is not incorporated or
718 organized under the laws of this state.

719 [~~(14)~~] (16) (a) "Foreign operating company" means a corporation that:

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

721 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is
722 conducted outside the United States.

723 (b) "Foreign operating company" does not include a corporation that qualifies for the
724 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

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

726 (i) a business entity organized outside the laws of the United States if:

727 (A) at least 75% of the business entity's total asset value at the close of the business
728 entity's taxable year is represented by:

729 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

730 (II) cash or cash equivalents; or

731 (III) one or more securities issued or guaranteed by the United States;

732 (B) the business entity is:

733 (I) not subject to income taxation:

734 (Aa) on amounts distributed to the business entity's beneficial owners; and

735 (Bb) in the jurisdiction in which the business entity is organized; or

736 (II) exempt from income taxation on an entity level in the jurisdiction in which the
737 business entity is organized;

738 (C) the business entity distributes at least 85% of the business entity's taxable income.

739 as computed in the jurisdiction in which the business entity is organized, to the holders of the
740 business entity's:

741 (I) shares or beneficial interests; and

742 (II) on an annual basis;

743 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively
744 by a single person:

745 (Aa) the voting power of the business entity; or

746 (Bb) the value of the shares or beneficial interests of the business entity; or

747 (II) the shares of the business entity are regularly traded on an established securities
748 market; and

749 (E) the business entity is organized in a country that has a tax treaty with the United
750 States; or

751 (ii) a listed Australian property trust.

752 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
753 commission may make rules defining:

754 (i) "cash or cash equivalents";

755 (ii) "established securities market"; or

756 (iii) "listed Australian property trust."

757 ~~[(15)]~~ (18) "Income" includes losses.

758 ~~[(16)]~~ (19) "Internal Revenue Code" means Title 26 of the United States Code as
759 effective during the year in which Utah taxable income is determined.

760 ~~[(17)]~~ (20) "Nonbusiness income" is as defined in Section 59-7-302.

761 ~~[(18)]~~ (21) "Nonresident shareholder" means any shareholder of an S corporation who
762 on the last day of the taxable year of the S corporation, is:

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

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

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

766 ~~[(19)]~~ (23) "Related expenses" means:

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

768 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
769 and business income which bears the same ratio to the aggregate amount of such interest or

770 other expense, determined without regard to this Subsection [~~(19)~~] (23), as the average amount
771 of the asset producing the nonbusiness income bears to the average amount of all assets of the
772 taxpayer within the taxable year.

773 [~~(20)~~] (24) "Resident shareholder" means any shareholder of an S corporation who is
774 not a nonresident shareholder.

775 [~~(22)~~] (25) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
776 Section 168, Internal Revenue Code.

777 [~~(21)~~] (26) "S corporation" means an S corporation as defined in Section 1361, Internal
778 Revenue Code.

779 [~~(23)~~] (27) "State of the United States" includes any of the 50 states or the District of
780 Columbia [~~and "United States" includes the 50 states and the District of Columbia~~].

781 [~~(24)~~] (28) (a) "Taxable year" means the calendar year or the fiscal year ending during
782 such calendar year upon the basis of which the adjusted income is computed.

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

786 [~~(25)~~] (29) "Taxpayer" means any corporation subject to the tax imposed by this
787 chapter.

788 [~~(26)~~] (30) "Threshold level of business activity" means business activity in the United
789 States equal to or greater than 20% of the corporation's total business activity as determined
790 under Section 59-7-401.

791 [~~(27)~~] (31) "Unadjusted income" means federal taxable income as determined on a
792 separate return basis before intercompany eliminations as determined by the Internal Revenue
793 Code, before the net operating loss deduction and special deductions for dividends received.

794 [~~(28)~~] (32) (a) "Unitary group" means a group of corporations that:

795 (i) are related through common ownership; and

796 (ii) by a preponderance of the evidence as determined by a court of competent
797 jurisdiction or the commission, are economically interdependent with one another as

798 demonstrated by the following factors:

799 (A) centralized management;

800 (B) functional integration; and

801 (C) economies of scale.

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

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

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

805 [~~(29)~~] (34) "Utah net loss" means the current year Utah taxable income before Utah net
806 loss deduction, if determined to be less than zero.

807 [~~(30)~~] (35) "Utah net loss deduction" means the amount of Utah net losses from other
808 taxable years that may be carried back or carried forward to the current taxable year in
809 accordance with Section 59-7-110.

810 [~~(31)~~] (36) (a) "Utah taxable income" means Utah taxable income before net loss
811 deduction less Utah net loss deduction.

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

815 [~~(32)~~] (37) "Utah taxable income before net loss deduction" means apportioned income
816 plus nonbusiness income allocable to Utah net of related expenses.

817 [~~(33)~~] (38) (a) "Water's edge combined report" means a report combining the income
818 and activities of:

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

820 (A) corporations organized or incorporated in the United States, including those
821 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
822 936, Internal Revenue Code, in accordance with Subsection [~~(33)~~] (38)(b); and

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

825 (ii) an affiliated group electing to file a water's edge combined report under Subsection
826 59-7-402(2).

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

830 [~~(34)~~] (39) "Worldwide combined report" means the combination of the income and
831 activities of all members of a unitary group irrespective of the country in which the

832 corporations are incorporated or conduct business activity.

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

834 **59-7-105. Additions to unadjusted income.**

835 In computing adjusted income the following amounts shall be added to unadjusted
836 income:

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

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

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

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

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

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

849 (5) any deduction on the federal return that has been previously deducted on the Utah
850 return;

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

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

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

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

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

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

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

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

871 (b) is subtracted by the corporation:

872 (i) that is the account owner; and

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

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

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

879 **59-7-106. Subtractions from unadjusted income.**

880 In computing adjusted income the following amounts shall be subtracted from
881 unadjusted income:

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

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

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

888 (a) deducted in the year incurred; or

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

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

893 (4) the decrease in qualified research and basic research expense deduction for federal

894 income tax purposes due to claiming the federal research and development credit under Section
895 41, Internal Revenue Code;

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

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

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

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

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

910 (10) charitable contributions, to the extent allowed as a subtraction under Section
911 59-7-109;

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

921 (b) in determining income apportionable to this state, a portion of the factors of a
922 foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be
923 included in the combined report factors. The portion to be included shall be determined by
924 multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the

925 numerator of which is the amount of the dividend paid by the foreign subsidiary which is
926 included in adjusted income, and the denominator of which is the current year earnings and
927 profits of the foreign subsidiary as determined under the Internal Revenue Code;

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

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

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

940 (14) the amount of gain or loss which is included in unadjusted income but not
941 recognized for federal purposes on stock sold, exchanged, or distributed by a corporation
942 pursuant to Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
943 Revenue Code, has been made for federal purposes;

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

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

950 (16) any interest expense not deducted on the federal corporate return under Section
951 265(b) or 291(e), Internal Revenue Code;

952 (17) 100% of the dividends received from subsidiaries which are insurance companies
953 exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"
954 as defined by Subsection 59-7-101~~(7)~~(8); ~~and~~

955 (18) subject to Subsection 59-7-105(12), the amount of a qualified investment as

956 defined in Section 53B-8a-102 that:

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

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

961 (c) does not exceed the maximum amount of the qualified investment that may be
962 subtracted from unadjusted income for a taxable year in accordance with Subsections
963 53B-8a-106(1)(d) and (f)[-]; and

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

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

968 **59-7-116.5. Real estate investment trusts.**

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

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

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

975 **59-7-402. Water's edge combined report.**

976 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection
977 59-7-101~~(33)~~(38)(a) is doing business in Utah, the unitary group shall file a water's edge
978 combined report.

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

981 (i) doing business in Utah;

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

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

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

987 corporation within the affiliated group that is doing business in Utah must file a combined
988 report.

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

991 Section 21. Section **59-10-103** is amended to read:

992 **59-10-103. Definitions.**

993 (1) As used in this chapter:

994 (a) "Adjusted gross income":

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

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

999 [~~(b) "Adoption expenses" means:~~]

1000 [~~(i) any actual medical and hospital expenses of the mother of the adopted child which
1001 are incident to the child's birth;~~]

1002 [~~(ii) any welfare agency fees or costs;~~]

1003 [~~(iii) any child placement service fees or costs;~~]

1004 [~~(iv) any legal fees or costs; or~~]

1005 [~~(v) any other fees or costs relating to an adoption.]~~]

1006 [~~(c) "Adult with a disability" means an individual who:~~]

1007 [~~(i) is 18 years of age or older;~~]

1008 [~~(ii) is eligible for services under Title 62A, Chapter 5, Services for People with
1009 Disabilities; and]~~]

1010 [~~(iii) is not enrolled in:~~]

1011 [~~(A) an education program for students with disabilities that is authorized under
1012 Section 53A-15-301; or]~~]

1013 [~~(B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.]~~]

1014 [~~(d) (i) For purposes of Subsection 59-10-114(2)(1), "capital gain transaction" means a
1015 transaction that results in a:~~]

1016 [~~(A) short-term capital gain; or]~~]

1017 [~~(B) long-term capital gain.]~~]

1018 ~~[(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
1019 ~~the commission may by rule define the term "transaction."]~~
1020 ~~[(e) "Commercial domicile" means the principal place from which the trade or business~~
1021 ~~of a Utah small business corporation is directed or managed.]~~
1022 ~~[(f)] (b) "Corporation" includes:~~
1023 ~~(i) [associations] an association;~~
1024 ~~(ii) a joint stock [companies] company; and~~
1025 ~~(iii) an insurance [companies] company.~~
1026 ~~[(g) "Dependent child with a disability" means an individual 21 years of age or younger~~
1027 ~~who:]~~
1028 ~~[(i) (A) is diagnosed by a school district representative under rules adopted by the State~~
1029 ~~Board of Education as having a disability classified as:]~~
1030 ~~[(I) autism;]~~
1031 ~~[(II) deafness;]~~
1032 ~~[(III) preschool developmental delay;]~~
1033 ~~[(IV) dual sensory impairment;]~~
1034 ~~[(V) hearing impairment;]~~
1035 ~~[(VI) intellectual disability;]~~
1036 ~~[(VII) multidisability;]~~
1037 ~~[(VIII) orthopedic impairment;]~~
1038 ~~[(IX) other health impairment;]~~
1039 ~~[(X) traumatic brain injury; or]~~
1040 ~~[(XI) visual impairment;]~~
1041 ~~[(B) is not receiving residential services from:]~~
1042 ~~[(I) the Division of Services for People with Disabilities created under Section~~
1043 ~~62A-5-102; or]~~
1044 ~~[(H) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;~~
1045 ~~and]~~
1046 ~~[(C) is enrolled in:]~~
1047 ~~[(I) an education program for students with disabilities that is authorized under Section~~
1048 ~~53A-15-301; or]~~

1049 ~~[(H) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;~~
1050 or]

1051 ~~[(ii) is identified under guidelines of the Department of Health as qualified for:]~~
1052 ~~[(A) Early Intervention; or]~~
1053 ~~[(B) Infant Development Services.]~~

1054 ~~[(h)]~~ (c) "Distributable net income" is as defined in Section 643, Internal Revenue
1055 Code.

1056 ~~[(i)]~~ (d) "Employee" is as defined in Section 59-10-401.
1057 ~~[(j)]~~ (e) "Employer" is as defined in Section 59-10-401.
1058 ~~[(k)]~~ (f) "Federal taxable income":
1059 (i) for a resident or nonresident individual, means taxable income as defined by Section
1060 63, Internal Revenue Code; or
1061 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
1062 (b), Internal Revenue Code.

1063 ~~[(l)]~~ (g) "Fiduciary" means:
1064 (i) a guardian;
1065 (ii) a trustee;
1066 (iii) an executor;
1067 (iv) an administrator;
1068 (v) a receiver;
1069 (vi) a conservator; or
1070 (vii) any person acting in any fiduciary capacity for any individual.

1071 (h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

1072 ~~[(m)]~~ (i) "Homesteaded land diminished from the Uintah and Ouray Reservation"
1073 means the homesteaded land that was held to have been diminished from the Uintah and Ouray
1074 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

1075 ~~[(n)]~~ (j) "Individual" means a natural person and includes aliens and minors.
1076 ~~[(o)]~~ (k) "Irrevocable trust" means a trust in which the settlor may not revoke or
1077 terminate all or part of the trust without the consent of a person who has a substantial beneficial
1078 interest in the trust and the interest would be adversely affected by the exercise of the settlor's
1079 power to revoke or terminate all or part of the trust.

1080 ~~[(p) For purposes of Subsection 59-10-114(2)(l), "long-term capital gain" is as defined~~
1081 ~~in Section 1222, Internal Revenue Code.]~~

1082 (l) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.

1083 ~~[(q)]~~ (m) "Nonresident individual" means an individual who is not a resident of this
1084 state.

1085 ~~[(r)]~~ (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not
1086 a resident estate or trust.

1087 ~~[(s)]~~ (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
1088 unincorporated organization:

1089 (A) through or by means of which any business, financial operation, or venture is
1090 carried on; and

1091 (B) which is not, within the meaning of this chapter:

1092 (I) a trust;

1093 (II) an estate; or

1094 (III) a corporation.

1095 (ii) "Partnership" does not include any organization not included under the definition of
1096 "partnership" in Section 761, Internal Revenue Code.

1097 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
1098 organization described in Subsection (1)~~[(s)]~~(o)(i).

1099 ~~[(t) "Qualifying military servicemember" means a member of:]~~

1100 ~~[(i) The Utah Army National Guard;]~~

1101 ~~[(ii) The Utah Air National Guard; or]~~

1102 ~~[(iii) the following if the member is assigned to a unit that is located in the state:]~~

1103 ~~[(A) The Army Reserve;]~~

1104 ~~[(B) The Naval Reserve;]~~

1105 ~~[(C) The Air Force Reserve;]~~

1106 ~~[(D) The Marine Corps Reserve; or]~~

1107 ~~[(E) The Coast Guard Reserve.]~~

1108 ~~[(u) "Qualifying stock" means stock that is:]~~

1109 ~~[(i) (A) common; or]~~

1110 ~~[(B) preferred;]~~

1111 ~~[(ii) as defined by the commission by rule, originally issued to:]~~
1112 ~~[(A) a resident or nonresident individual; or]~~
1113 ~~[(B) a partnership if the resident or nonresident individual making a subtraction from~~
1114 ~~federal taxable income in accordance with Subsection 59-10-114(2)(1):]~~
1115 ~~[(F) was a partner when the stock was issued; and]~~
1116 ~~[(H) remains a partner until the last day of the taxable year for which the resident or~~
1117 ~~nonresident individual makes the subtraction from federal taxable income in accordance with~~
1118 ~~Subsection 59-10-114(2)(1); and]~~
1119 ~~[(iii) issued:]~~
1120 ~~[(A) by a Utah small business corporation;]~~
1121 ~~[(B) on or after January 1, 2003; and]~~
1122 ~~[(C) for:]~~
1123 ~~[(F) money; or]~~
1124 ~~[(H) other property, except for stock or securities:]~~
1125 (p) "Qualified nongrantor charitable lead trust" means a trust:
1126 (i) that is irrevocable;
1127 (ii) that has a trust term measured by:
1128 (A) a fixed term of years; or
1129 (B) the life of a person living on the day on which the trust is created;
1130 (iii) under which:
1131 (A) a portion of the value of the trust assets is distributed during the trust term:
1132 (I) to an organization described in Section 170(c), Internal Revenue Code; and
1133 (II) as a:
1134 (Aa) guaranteed annuity interest; or
1135 (Bb) unitrust interest; and
1136 (B) assets remaining in the trust at the termination of the trust term are distributed to a
1137 beneficiary:
1138 (I) designated in the trust; and
1139 (II) that is not an organization described in Section 170(c), Internal Revenue Code;
1140 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue
1141 Code; and

1142 (v) under which the grantor of the trust is not treated as the owner of any portion of the
1143 trust for federal income tax purposes.

1144 [~~(v)~~] (q) (i) "Resident individual" means:

1145 (A) an individual who is domiciled in this state for any period of time during the
1146 taxable year, but only for the duration of the period during which the individual is domiciled in
1147 this state; or

1148 (B) an individual who is not domiciled in this state but:

1149 (I) maintains a permanent place of abode in this state; and

1150 (II) spends in the aggregate 183 or more days of the taxable year in this state.

1151 (ii) For purposes of Subsection (1)[~~(v)~~] (q)(i)(B), a fraction of a calendar day shall be
1152 counted as a whole day.

1153 [~~(w)~~] (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.

1154 [~~(x)~~ For purposes of Subsection 59-10-114(2)(1), "short-term capital gain" is as defined
1155 in Section 1222, Internal Revenue Code.]

1156 (s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.

1157 (t) "State income tax percentage for a nonresident estate or trust" means a percentage
1158 equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the
1159 nonresident estate's or trust's total adjusted gross income for that taxable year after making the
1160 adjustments required by:

1161 (i) Section 59-10-202;

1162 (ii) Section 59-10-207;

1163 (iii) Section 59-10-209.1; or

1164 (iv) Section 59-10-210;

1165 (u) "State income tax percentage for a nonresident individual" means a percentage
1166 equal to a nonresident individual's state taxable income for the taxable year divided by the
1167 difference between:

1168 (i) the nonresident individual's total adjusted gross income for that taxable year, after
1169 making the:

1170 (A) additions and subtractions required by Section 59-10-114; and

1171 (B) adjustments required by Section 59-10-115; and

1172 (ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember,

1173 the compensation the servicemember receives for military service if the servicemember is
1174 servicing in compliance with military orders.

1175 (v) "State income tax percentage for a part-year resident individual" means, for a
1176 taxable year, a fraction:

1177 (i) the numerator of which is the sum of:

1178 (A) subject to Subsections 59-10-1404(3) and (4), for the time period during the
1179 taxable year that the part-year resident individual is a resident, the part-year resident
1180 individual's total adjusted gross income for that time period, after making the:

1181 (I) additions and subtractions required by Section 59-10-114; and

1182 (II) adjustments required by Section 59-10-115; and

1183 (B) for the time period during the taxable year that the part-year resident individual is a
1184 nonresident, an amount calculated by:

1185 (I) determining the part-year resident individual's adjusted gross income for that time
1186 period, after making the:

1187 (Aa) additions and subtractions required by Section 59-10-114; and

1188 (Bb) adjustments required by Section 59-10-115; and

1189 (II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I)
1190 that is derived from Utah sources in accordance with Section 59-10-117; and

1191 (ii) the denominator of which is the difference between:

1192 (A) the part-year resident individual's total adjusted gross income for that taxable year,
1193 after making the:

1194 (I) additions and subtractions required by Section 59-10-114; and

1195 (II) adjustments required by Section 59-10-115; and

1196 (B) if the part-year resident individual is a servicemember, any compensation the
1197 servicemember receives for military service during the portion of the taxable year that the
1198 servicemember is a nonresident if the servicemember is servicing in compliance with military
1199 orders.

1200 ~~[(y)]~~ (w) "Taxable income" or "state taxable income":

1201 (i) subject to Subsection ~~[59-10-302(2)]~~ 59-10-1404(3), for a resident individual ~~[other~~
1202 than a resident individual described in Subsection (1)(y)(iii)], means the resident individual's
1203 ~~[federal taxable]~~ adjusted gross income after making the:

1204 (A) additions and subtractions required by Section 59-10-114; and
1205 (B) adjustments required by Section 59-10-115;
1206 (ii) for a nonresident individual [~~other than a nonresident individual described in~~
1207 ~~Subsection (1)(y)(iii), is as defined in Section 59-10-116;~~], is an amount calculated by:
1208 (A) determining the nonresident individual's adjusted gross income for the taxable
1209 year, after making the:
1210 (I) additions and subtractions required by Section 59-10-114; and
1211 (II) adjustments required by Section 59-10-115; and
1212 (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A)
1213 that is derived from Utah sources in accordance with Section 59-10-117;
1214 ~~[(iii) for a resident or nonresident individual that collects and pays a tax described in~~
1215 ~~Part 12, Single Rate Individual Income Tax Act, is as defined in Section 59-10-1202;]~~
1216 ~~[(iv)] (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and~~
1217 ~~[(v)] (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.~~
1218 ~~[(z)] (x) "Taxpayer" means any individual, estate, [or] trust, or beneficiary of an estate~~
1219 ~~or trust, [whose income is] that has income subject in whole or part to the tax imposed by this~~
1220 ~~chapter.~~
1221 (y) "Trust term" means a time period:
1222 (i) beginning on the day on which a qualified nongrantor charitable lead trust is
1223 created; and
1224 (ii) ending on the day on which the qualified nongrantor charitable lead trust described
1225 in Subsection (1)(y)(i) terminates.
1226 ~~[(aa)] (z) "Uintah and Ouray Reservation" means the lands recognized as being~~
1227 ~~included within the Uintah and Ouray Reservation in:~~
1228 ~~(i) Hagen v. Utah, 510 U.S. 399 (1994); and~~
1229 ~~(ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).~~
1230 ~~[(bb) (i) "Utah small business corporation" means a corporation that:]~~
1231 ~~[(A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue~~
1232 ~~Code;]~~
1233 ~~[(B) except as provided in Subsection (1)(bb)(ii), meets the requirements of Section~~
1234 ~~1244(c)(1)(C), Internal Revenue Code; and]~~

1235 ~~[(C) has its commercial domicile in this state.]~~

1236 ~~[(ii) Notwithstanding Subsection (1)(bb)(i)(B), the time period described in Section~~
1237 ~~1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a~~
1238 ~~corporation's aggregate gross receipts shall end on the last day of the taxable year for which the~~
1239 ~~resident or nonresident individual makes a subtraction from federal taxable income in~~
1240 ~~accordance with Subsection 59-10-114(2)(i).]~~

1241 (aa) "Unadjusted income" means an amount equal to the difference between:

1242 (i) the total income required to be reported by a resident or nonresident estate or trust
1243 on the resident or nonresident estate's or trust's federal income tax return for estates and trusts
1244 for the taxable year; and

1245 (ii) the sum of the following:

1246 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:

1247 (I) for administering the resident or nonresident estate or trust; and

1248 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or
1249 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
1250 year;

1251 (B) the income distribution deduction that a resident or nonresident estate or trust
1252 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or
1253 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
1254 year;

1255 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for
1256 estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as
1257 allowed on the resident or nonresident estate's or trust's federal income tax return for estates
1258 and trusts for the taxable year; and

1259 (D) the amount that a resident or nonresident estate or trust deducts as a personal
1260 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or
1261 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
1262 year.

1263 (bb) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

1264 (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute
1265 Indian Tribe of the Uintah and Ouray Reservation.

1266 (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

1267 (ee) "Wages" is as defined in Section 59-10-401.

1268 (2) (a) Any term used in this chapter has the same meaning as when used in
1269 comparable context in the laws of the United States relating to federal income taxes unless a
1270 different meaning is clearly required.

1271 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
1272 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
1273 federal income taxes that are in effect for the taxable year.

1274 (c) Any reference to a specific section of the Internal Revenue Code or other provision
1275 of the laws of the United States relating to federal income taxes shall include any
1276 corresponding or comparable provisions of the Internal Revenue Code as [hereafter] amended,
1277 redesignated, or reenacted.

1278 Section 22. Section **59-10-104** is amended to read:

1279 **59-10-104. Tax basis -- Tax rate -- Exemption.**

1280 (1) [~~Except as provided in Subsection (5) or Part 12, Single Rate Individual Income~~
1281 ~~Tax Act, for~~ For taxable years beginning on or after January 1, [2006] 2008, [~~but beginning on~~
1282 ~~or before December 31, 2007,~~] a tax is imposed on the state taxable income of [every] a
1283 resident individual as provided in this section.

1284 [~~(2) For an individual, other than a husband and wife or head of household required to~~
1285 ~~use the tax table under Subsection (3), the tax under this section is imposed in accordance with~~
1286 ~~the following income brackets:]~~

1287	[If the state taxable income is:	_____	The tax is:]
1288	[Less than or equal to \$1,000	_____	2.3% of the state taxable income]
1289	[Greater than \$1,000 but less than	_____	\$23, plus 3.3% of state taxable]
1290	[or equal to \$2,000	_____	income greater than \$1,000]
1291	[Greater than \$2,000 but less than	_____	\$56, plus 4.2% of state taxable]
1292	[or equal to \$3,000	_____	income greater than \$2,000]
1293	[Greater than \$3,000 but less than	_____	\$98, plus 5.2% of state taxable]
1294	[or equal to \$4,000	_____	income greater than \$3,000]
1295	[Greater than \$4,000 but less than	_____	\$150, plus 6% of state taxable]
1296	[or equal to \$5,500	_____	income greater than \$4,000]

1297 [~~Greater than \$5,500~~ ~~—————~~ ~~\$240, plus 6.98% of state taxable]~~
1298 [~~income greater than \$5,500]~~
1299 [~~(3) For a husband and wife filing a single return jointly, or a head of household as~~
1300 ~~defined in Section 2(b), Internal Revenue Code, filing a single return, the tax under this section~~
1301 ~~is imposed in accordance with the following income brackets:]~~
1302 [~~If the state taxable income is: ————— The tax is:]~~
1303 [~~Less than or equal to \$2,000 ————— 2.3% of the state taxable income]~~
1304 [~~Greater than \$2,000 but less than ————— \$46, plus 3.3% of state taxable]~~
1305 [~~or equal to \$4,000 ————— income greater than \$2,000]~~
1306 [~~Greater than \$4,000 but less than ————— \$112, plus 4.2% of state taxable]~~
1307 [~~or equal to \$6,000 ————— income greater than \$4,000]~~
1308 [~~Greater than \$6,000 but less than ————— \$196, plus 5.2% of state taxable]~~
1309 [~~or equal to \$8,000 ————— income greater than \$6,000]~~
1310 [~~Greater than \$8,000 but less than ————— \$300, plus 6% of state taxable]~~
1311 [~~or equal to \$11,000 ————— income greater than \$8,000]~~
1312 [~~Greater than \$11,000 ————— \$480, plus 6.98% of state taxable]~~
1313 [~~income greater than \$11,000]~~
1314 [~~(4) (a) For taxable years beginning on or after January 1, 2009, the commission shall:]~~
1315 [~~(i) make the following adjustments to the income brackets under Subsection (2):]~~
1316 [~~(A) increase or decrease the income brackets under Subsection (2) by a percentage~~
1317 ~~equal to the percentage difference between the consumer price index for the preceding calendar~~
1318 ~~year and the consumer price index for the calendar year 2007; and]~~
1319 [~~(B) after making an increase or decrease under Subsection (4)(a)(i)(A), round the~~
1320 ~~income brackets under Subsection (2) to the nearest whole dollar;]~~
1321 [~~(ii) after making the adjustments described in Subsection (4)(a)(i) to the income~~
1322 ~~brackets under Subsection (2), adjust the income brackets under Subsection (3) so that for each~~
1323 ~~income bracket under Subsection (2) there is a corresponding income bracket under Subsection~~
1324 ~~(3) that is equal to the product of:]~~
1325 [~~(A) each income bracket under Subsection (2); and]~~
1326 [~~(B) two; and]~~
1327 [~~(iii) to the extent necessary to reflect an adjustment under Subsection (4)(a)(i) or (ii):]~~

1328 ~~[(A) increase or decrease the amount of tax under Subsection (2) or (3) prior to adding~~
1329 ~~in the portion of the tax calculated as a percentage of state taxable income; and]~~

1330 ~~[(B) after making an increase or decrease under Subsection (4)(a)(iii)(A), round the~~
1331 ~~amount of tax under Subsection (2) or (3) to the nearest whole dollar.]~~

1332 ~~[(b) The commission may not increase or decrease the tax rate percentages provided in~~
1333 ~~Subsection (2) or (3).]~~

1334 ~~[(c) For purposes of Subsection (4)(a)(i), the commission shall calculate the consumer~~
1335 ~~price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.]~~

1336 (2) For purposes of Subsection (1), for a taxable year, the tax is an amount equal to the
1337 product of:

1338 (a) the resident individual's state taxable income for that taxable year; and

1339 (b) 5%.

1340 ~~[(5)] (3) This section does not apply to a resident individual exempt from taxation~~
1341 ~~under Section 59-10-104.1.~~

1342 Section 23. Section **59-10-104.1** is amended to read:

1343 **59-10-104.1. Exemption from taxation.**

1344 (1) For purposes of this section:

1345 (a) "Personal exemptions" means the total exemption amount an individual is allowed
1346 to claim for the taxable year under Section 151, Internal Revenue Code, for:

1347 (i) the individual;

1348 (ii) the individual's spouse; and

1349 (iii) the individual's dependents.

1350 (b) "Standard deduction":

1351 (i) ~~[except as provided in Subsection (1)(b)(ii),]~~ means the standard deduction an
1352 individual is allowed to claim for the taxable year under Section 63, Internal Revenue Code;
1353 and

1354 (ii) notwithstanding Subsection (1)(b)(i), does not include an additional amount
1355 allowed under Section 63(f), Internal Revenue Code, for an individual or an individual's spouse
1356 who is:

1357 (A) blind; or

1358 (B) 65 years of age or older.

1359 (2) For taxable years beginning on or after January 1, 2002, an individual is exempt
 1360 from a tax imposed by Section 59-10-104 or 59-10-116 [~~or described in Section 59-10-1203~~]
 1361 if the individual's adjusted gross income on the individual's federal individual income tax
 1362 return for the taxable year is less than or equal to the sum of the individual's:

- 1363 (a) personal exemptions for that taxable year; and
 1364 (b) standard deduction for that taxable year.

1365 Section 24. Section **59-10-110** is amended to read:

1366 **59-10-110. Disallowance of federal tax credits.**

1367 [~~No~~] A credit applied directly to the income tax calculated for federal income tax
 1368 purposes [~~pursuant to~~] in accordance with the Internal Revenue Code [~~shall~~] may not be
 1369 applied in calculating the tax due under this chapter.

1370 Section 25. Section **59-10-114** is amended to read:

1371 **59-10-114. Additions to and subtractions from adjusted gross income of an**
 1372 **individual.**

1373 (1) There shall be added to [~~federal taxable~~] adjusted gross income of a resident or
 1374 nonresident individual:

1375 [~~(a) the amount of any income tax imposed by this or any predecessor Utah individual~~
 1376 ~~income tax law and the amount of any income tax imposed by the laws of another state, the~~
 1377 ~~District of Columbia, or a possession of the United States, to the extent deducted from adjusted~~
 1378 ~~gross income in determining federal taxable income;~~]

1379 [~~(b)~~] (a) a lump sum distribution that the taxpayer does not include in adjusted gross
 1380 income on the taxpayer's federal individual income tax return for the taxable year;

1381 [~~(c)~~] (b) [~~for taxable years beginning on or after January 1, 2002;~~] the amount of a
 1382 child's income calculated under Subsection [~~(5)~~] (4) that:

1383 (i) a parent elects to report on the parent's federal individual income tax return for the
 1384 taxable year; and

1385 (ii) the parent does not include in adjusted gross income on the parent's federal
 1386 individual income tax return for the taxable year;

1387 [~~(d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue~~
 1388 ~~Code;~~]

1389 [~~(e)~~] (c) (i) a withdrawal from a medical care savings account and any penalty imposed

1390 ~~in~~ for the taxable year if:

1391 ~~(i)~~ (A) the resident or nonresident individual ~~did~~ does not deduct ~~or include~~ the

1392 amounts on the resident or nonresident individual's federal individual income tax return

1393 ~~pursuant to~~ under Section 220, Internal Revenue Code;

1394 ~~(i)~~ (I) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

1395 ~~(iii)~~ (II) the withdrawal is ~~deducted by~~:

1396 (Aa) subtracted on a return the resident or nonresident individual ~~under Subsection~~

1397 ~~(2)(h);~~ files under this chapter for a taxable year beginning on or before December 31, 2007;

1398 or

1399 (Bb) used as the basis for a resident or nonresident individual to claim a tax credit

1400 under Section 59-10-1021;

1401 (ii) a disbursement required to be added to adjusted gross income in accordance with

1402 Subsection 31A-32a-105(3); or

1403 (iii) an amount required to be added to adjusted gross income in accordance with

1404 Subsection 31A-32a-105(5)(c);

1405 ~~(f)~~ (d) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings

1406 Incentive Program, from the account of a resident or nonresident individual who is an account

1407 owner as defined in Section 53B-8a-102, for the taxable year for which the amount is

1408 withdrawn, if that amount withdrawn from the account of the resident or nonresident individual

1409 who is the account owner:

1410 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and

1411 (ii) is:

1412 (A) subtracted by the resident or nonresident individual:

1413 (I) who is the account owner; and

1414 ~~(H) in accordance with Subsection (2)(i); or~~

1415 (II) on the resident or nonresident individual's return filed under this chapter for a

1416 taxable year beginning on or before December 31, 2007; or

1417 (B) used as the basis for the resident or nonresident individual who is the account

1418 owner to claim a tax credit under Section ~~[59-10-1206.1]~~ 59-10-1017;

1419 ~~(g)~~ (e) except as provided in Subsection (6), ~~[for taxable years beginning on or after~~

1420 January 1, 2003;] for bonds, notes, and other evidences of indebtedness acquired on or after

1421 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
 1422 one or more of the following entities:

1423 (i) a state other than this state;

1424 (ii) the District of Columbia;

1425 (iii) a political subdivision of a state other than this state; or

1426 (iv) an agency or instrumentality of an entity described in Subsections (1)~~(g)~~(e)(i)

1427 through (iii);

1428 ~~(h)~~ (f) subject to Subsection (2)~~(n)~~(c), any distribution received by a resident
 1429 beneficiary of a resident trust of income that was taxed at the trust level for federal tax
 1430 purposes, but was subtracted from state taxable income of the trust pursuant to Subsection
 1431 59-10-202(2)~~(e)~~(b);

1432 ~~(i)~~ (g) any distribution received by a resident beneficiary of a nonresident trust of
 1433 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
 1434 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
 1435 was not taxed at the trust level by any state, with undistributed distributable net income
 1436 considered to be distributed from the most recently accumulated undistributed distributable net
 1437 income; and

1438 ~~(j)~~ (h) any adoption expense:

1439 (i) for which a resident or nonresident individual receives reimbursement from another
 1440 person; and

1441 (ii) to the extent to which the resident or nonresident individual ~~[deducts]~~ subtracts that
 1442 adoption expense:

1443 ~~[(A) under Subsection (2)(c); or]~~

1444 (A) on a return filed under this chapter for a taxable year beginning on or before
 1445 December 31, 2007; or

1446 (B) from federal taxable income on a federal individual income tax return.

1447 (2) There shall be subtracted from ~~[federal taxable]~~ adjusted gross income of a resident
 1448 or nonresident individual:

1449 (a) the difference between:

1450 ~~(a)~~ (i) the interest or a dividend on ~~[obligations or securities]~~ an obligation or security
 1451 of the United States ~~[and its possessions or of any]~~ or an authority, commission, ~~[or]~~

1452 instrumentality, or possession of the United States, to the extent that interest or dividend is:

1453 (A) included in adjusted gross income for federal income tax purposes for the taxable
1454 year [~~but~~]; and

1455 (B) exempt from state income taxes under the laws of the United States[~~, but the~~
1456 ~~amount subtracted under this Subsection (2)(a) shall be reduced by~~]; and

1457 (ii) any interest on indebtedness incurred or continued to purchase or carry the
1458 [~~obligations or securities~~] obligation or security described in [~~this~~] Subsection (2)(a)(i)[~~, and by~~
1459 ~~any expenses incurred in the production of interest or dividend income described in this~~
1460 ~~Subsection (2)(a) to the extent that such expenses, including amortizable bond premiums, are~~
1461 ~~deductible in determining federal taxable income~~];

1462 [(b) 1/2 of the net amount of any income tax paid or payable to the United States after
1463 all allowable credits, as reported on the United States individual income tax return of the
1464 taxpayer for the same taxable year;]

1465 [(c) the amount of adoption expenses for one of the following taxable years as elected
1466 by the resident or nonresident individual:]

1467 [(i) regardless of whether a court issues an order granting the adoption, the taxable year
1468 in which the adoption expenses are:]

1469 [(A) paid; or]

1470 [(B) incurred;]

1471 [(ii) the taxable year in which a court issues an order granting the adoption; or]

1472 [(iii) any year in which the resident or nonresident individual may claim the federal
1473 adoption expenses credit under Section 23, Internal Revenue Code;]

1474 [(d) amounts received by taxpayers under age 65 as retirement income which, for
1475 purposes of this section, means pensions and annuities, paid from an annuity contract
1476 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),
1477 Internal Revenue Code, or purchased by an employee under a plan which meets the
1478 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or
1479 political subdivision thereof, or the District of Columbia, to the employee involved or the
1480 surviving spouse;]

1481 [(e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500
1482 personal retirement exemption;]

1483 ~~[(f) 75% of the amount of the personal exemption, as defined and calculated in the~~
1484 ~~Internal Revenue Code, for each dependent child with a disability and adult with a disability~~
1485 ~~who is claimed as a dependent on a taxpayer's return;]~~
1486 ~~[(g) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the~~
1487 ~~taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:]~~
1488 ~~[(i) for:]~~
1489 ~~[(A) the taxpayer;]~~
1490 ~~[(B) the taxpayer's spouse; and]~~
1491 ~~[(C) the taxpayer's dependents; and]~~
1492 ~~[(ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or~~
1493 ~~213, Internal Revenue Code, in determining federal taxable income for the taxable year;]~~
1494 ~~[(h) (i) except as provided in this Subsection (2)(h), the amount of a contribution made~~
1495 ~~during the taxable year on behalf of the taxpayer to a medical care savings account and interest~~
1496 ~~earned on a contribution to a medical care savings account established pursuant to Title 31A,~~
1497 ~~Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by~~
1498 ~~the account administrator as provided in the Medical Care Savings Account Act, and if the~~
1499 ~~taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax~~
1500 ~~return pursuant to Section 220, Internal Revenue Code; and]~~
1501 ~~[(ii) a contribution deductible under this Subsection (2)(h) may not exceed either of the~~
1502 ~~following:]~~
1503 ~~[(A) the maximum contribution allowed under the Medical Care Savings Account Act~~
1504 ~~for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is~~
1505 ~~covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that~~
1506 ~~covers the other spouse, and each spouse has a medical care savings account; or]~~
1507 ~~[(B) the maximum contribution allowed under the Medical Care Savings Account Act~~
1508 ~~for the tax year for taxpayers:]~~
1509 ~~[(F) who do not file a joint return; or]~~
1510 ~~[(H) who file a joint return, but do not qualify under Subsection (2)(h)(ii)(A);]~~
1511 ~~[(i) subject to Subsection (1)(f), the amount of a qualified investment as defined in~~
1512 ~~Section 53B-8a-102 that:]~~
1513 ~~[(i) a resident or nonresident individual who is an account owner as defined in Section~~

1514 ~~53B-8a-102 makes during the taxable year;]~~

1515 ~~[(ii) the resident or nonresident individual described in Subsection (2)(i)(i) does not~~
1516 ~~deduct on a federal individual income tax return; and]~~

1517 ~~[(iii) does not exceed the maximum amount of the qualified investment that may be~~
1518 ~~subtracted from federal taxable income for a taxable year in accordance with Subsections~~
1519 ~~53B-8a-106(1)(e) and (f);]~~

1520 ~~[(j) for taxable years beginning on or after January 1, 2000, any amounts paid for~~
1521 ~~premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the~~
1522 ~~amounts paid for long-term care insurance were not deducted under Section 213, Internal~~
1523 ~~Revenue Code, in determining federal taxable income;]~~

1524 ~~[(k) (b) for taxable years beginning on or after January 1, 2000, if the conditions of~~
1525 ~~Subsection [(4) (3)(a) are met, the amount of income derived by a Ute tribal member:~~

1526 ~~(i) during a time period that the Ute tribal member resides on homesteaded land~~
1527 ~~diminished from the Uintah and Ouray Reservation; and~~

1528 ~~(ii) from a source within the Uintah and Ouray Reservation;~~

1529 ~~[(l) (i) for taxable years beginning on or after January 1, 2003, the total amount of a~~
1530 ~~resident or nonresident individual's short-term capital gain or long-term capital gain on a~~
1531 ~~capital gain transaction:]~~

1532 ~~[(A) that occurs on or after January 1, 2003;]~~

1533 ~~[(B) if 70% or more of the gross proceeds of the capital gain transaction are expended:]~~

1534 ~~[(I) to purchase qualifying stock in a Utah small business corporation; and]~~

1535 ~~[(H) within a 12-month period after the day on which the capital gain transaction~~
1536 ~~occurs; and]~~

1537 ~~[(C) if, prior to the purchase of the qualifying stock described in Subsection~~
1538 ~~(2)(l)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the~~
1539 ~~Utah small business corporation that issued the qualifying stock; and]~~

1540 ~~[(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
1541 ~~the commission may make rules:]~~

1542 ~~[(A) defining the term "gross proceeds"; and]~~

1543 ~~[(B) for purposes of Subsection (2)(l)(i)(C), prescribing the circumstances under which~~
1544 ~~a resident or nonresident individual has an ownership interest in a Utah small business~~

1545 corporation;]

1546 [~~(m)~~ for the taxable year beginning on or after January 1, 2005, but beginning on or

1547 before December 31, 2005, the first \$2,200 of income a qualifying military servicemember

1548 receives:]

1549 [~~(i)~~ for service:]

1550 [~~(A)~~ as a qualifying military servicemember; or]

1551 [~~(B)~~ under an order into active service in accordance with Section 39-1-5; and]

1552 [~~(ii)~~ to the extent that income is included in adjusted gross income on that resident or

1553 nonresident individual's federal individual income tax return for that taxable year;]

1554 [~~(n)~~ (c) an amount received by a resident or nonresident individual or distribution

1555 received by a resident or nonresident beneficiary of a resident trust:

1556 (i) if that amount or distribution constitutes a refund of taxes imposed by:

1557 (A) a state; or

1558 (B) the District of Columbia; and

1559 (ii) to the extent that amount or distribution is included in adjusted gross income for

1560 that taxable year on the federal individual income tax return of the resident or nonresident

1561 individual or resident or nonresident beneficiary of a resident trust;

1562 [~~(o)~~ (d) the amount of a railroad retirement benefit:

1563 (i) paid:

1564 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et

1565 seq.;

1566 (B) to a resident or nonresident individual; and

1567 (C) for the taxable year; and

1568 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on

1569 that resident or nonresident individual's federal individual income tax return for that taxable

1570 year; and

1571 [~~(p)~~ (e) an amount:

1572 (i) received by an enrolled member of an American Indian tribe; and

1573 (ii) to the extent that the state is not authorized or permitted to impose a tax under this

1574 part on that amount in accordance with:

1575 (A) federal law;

1576 (B) a treaty; or

1577 (C) a final decision issued by a court of competent jurisdiction.

1578 ~~[(3)(a) For purposes of Subsection (2)(d), the amount of retirement income subtracted~~
1579 ~~for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or~~
1580 ~~\$4,800, except that:]~~

1581 ~~[(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income~~
1582 ~~earned over \$32,000, the amount of the retirement income exemption that may be subtracted~~
1583 ~~shall be reduced by 50 cents;]~~

1584 ~~[(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income~~
1585 ~~earned over \$16,000, the amount of the retirement income exemption that may be subtracted~~
1586 ~~shall be reduced by 50 cents; and]~~

1587 ~~[(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over~~
1588 ~~\$25,000, the amount of the retirement income exemption that may be subtracted shall be~~
1589 ~~reduced by 50 cents;]~~

1590 ~~[(b) For purposes of Subsection (2)(e), the amount of the personal retirement~~
1591 ~~exemption shall be further reduced according to the following schedule:]~~

1592 ~~[(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income~~
1593 ~~earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50~~
1594 ~~cents;]~~

1595 ~~[(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income~~
1596 ~~earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50~~
1597 ~~cents; and]~~

1598 ~~[(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over~~
1599 ~~\$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents;]~~

1600 ~~[(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be~~
1601 ~~calculated by adding to adjusted gross income any interest income not otherwise included in~~
1602 ~~adjusted gross income;]~~

1603 ~~[(d) For purposes of determining ownership of items of retirement income common~~
1604 ~~law doctrine will be applied in all cases even though some items may have originated from~~
1605 ~~service or investments in a community property state. Amounts received by the spouse of a~~
1606 ~~living retiree because of the retiree's having been employed in a community property state are~~

1607 not deductible as retirement income of such spouse.]

1608 [~~(e)~~ For purposes of Subsection (2)(g), a subtraction for an amount paid for health care
1609 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:]

1610 [(i) for an amount that is reimbursed or funded in whole or in part by the federal
1611 government, the state, or an agency or instrumentality of the federal government or the state;
1612 and]

1613 [(ii) for a taxpayer who is eligible to participate in a health plan maintained and funded
1614 in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.]

1615 [~~(4)~~ (3) (a) A subtraction for an amount described in Subsection (2)[~~(4)~~](b) is allowed
1616 only if:

1617 (i) the taxpayer is a Ute tribal member; and

1618 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
1619 requirements of this Subsection [~~(4)~~ (3)].

1620 (b) The agreement described in Subsection [~~(4)~~ (3)](a):

1621 (i) may not:

1622 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

1623 (B) provide a subtraction under this section greater than or different from the
1624 subtraction described in Subsection (2)[~~(4)~~](b); or

1625 (C) affect the power of the state to establish rates of taxation; and

1626 (ii) shall:

1627 (A) provide for the implementation of the subtraction described in Subsection
1628 (2)[~~(4)~~](b);

1629 (B) be in writing;

1630 (C) be signed by:

1631 (I) the governor; and

1632 (II) the chair of the Business Committee of the Ute tribe;

1633 (D) be conditioned on obtaining any approval required by federal law; and

1634 (E) state the effective date of the agreement.

1635 (c) (i) The governor shall report to the commission by no later than February 1 of each
1636 year regarding whether or not an agreement meeting the requirements of this Subsection [~~(4)~~]
1637 (3) is in effect.

1638 (ii) If an agreement meeting the requirements of this Subsection [~~(4)~~] (3) is terminated,
1639 the subtraction permitted under Subsection (2)[~~(k)~~](b) is not allowed for taxable years
1640 beginning on or after the January 1 following the termination of the agreement.

1641 (d) For purposes of Subsection (2)[~~(k)~~](b) and in accordance with Title 63, Chapter
1642 46a, Utah Administrative Rulemaking Act, the commission may make rules:

1643 (i) for determining whether income is derived from a source within the Uintah and
1644 Ouray Reservation; and

1645 (ii) that are substantially similar to how adjusted gross income derived from Utah
1646 sources is determined under Section 59-10-117.

1647 [~~(5)~~] (4) (a) For purposes of this Subsection [~~(5)~~] (4), "Form 8814" means:

1648 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
1649 Interest and Dividends; or

1650 (ii) (A) [~~for taxable years beginning on or after January 1, 2002;~~] a form designated by
1651 the commission in accordance with Subsection [~~(5)~~] (4)(a)(ii)(B) as being substantially similar
1652 to 2000 Form 8814 if for purposes of federal individual income taxes the information
1653 contained on 2000 Form 8814 is reported on a form other than Form 8814; and

1654 (B) for purposes of Subsection [~~(5)~~] (4)(a)(ii)(A) and in accordance with Title 63,
1655 Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules
1656 designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal
1657 individual income taxes the information contained on 2000 Form 8814 is reported on a form
1658 other than Form 8814.

1659 (b) The amount of a child's income added to adjusted gross income under Subsection
1660 (1)[~~(e)~~](b) is equal to the difference between:

1661 (i) the lesser of:

1662 (A) the base amount specified on Form 8814; and

1663 (B) the sum of the following reported on Form 8814:

1664 (I) the child's taxable interest;

1665 (II) the child's ordinary dividends; and

1666 (III) the child's capital gain distributions; and

1667 (ii) the amount not taxed that is specified on Form 8814.

1668 [~~(6)~~] (5) Notwithstanding Subsection (1)[~~(g)~~](e), interest from bonds, notes, and other

1669 evidences of indebtedness issued by an entity described in Subsections (1)~~(g)~~(e)(i) through
 1670 (iv) may not be added to ~~[federal taxable]~~ adjusted gross income of a resident or nonresident
 1671 individual if, as annually determined by the commission:

1672 (a) for an entity described in Subsection (1)~~(g)~~(e)(i) or (ii), the entity and all of the
 1673 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
 1674 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

1675 (b) for an entity described in Subsection (1)~~(g)~~(e)(iii) or (iv), the following do not
 1676 impose a tax based on income on any part of the bonds, notes, and other evidences of
 1677 indebtedness of this state:

1678 (i) the entity; or

1679 (ii) (A) the state in which the entity is located; or

1680 (B) the District of Columbia, if the entity is located within the District of Columbia.

1681 Section 26. Section **59-10-115** is amended to read:

1682 **59-10-115. Adjustments to adjusted gross income.**

1683 (1) The commission shall allow an adjustment to ~~[federal taxable]~~ adjusted gross
 1684 income of a ~~[taxpayer]~~ resident or nonresident individual if the ~~[taxpayer]~~ resident or
 1685 nonresident individual would otherwise:

1686 (a) receive a double tax benefit under this part; or

1687 (b) suffer a double tax detriment under this part.

1688 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 1689 commission may make rules to allow for the adjustment to ~~[federal taxable]~~ adjusted gross
 1690 income required by Subsection (1).

1691 Section 27. Section **59-10-116** is amended to read:

1692 **59-10-116. Tax on nonresident individual -- Calculation -- Exemption.**

1693 ~~[(1) For purposes of this section:]~~

1694 ~~[(a) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.]~~

1695 ~~[(b) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.]~~

1696 ~~[(c) "State income tax percentage" means a percentage equal to a nonresident
 1697 individual's adjusted gross income for the taxable year received from Utah sources, as
 1698 determined under Section 59-10-117, divided by the difference between:]~~

1699 ~~[(i) the nonresident individual's total adjusted gross income for that taxable year; and]~~

1700 ~~[(ii) if the nonresident individual described in Subsection (1)(c)(i) is a servicemember,~~
 1701 ~~the compensation the servicemember receives for military service if the servicemember is~~
 1702 ~~servicing in compliance with military orders.]~~

1703 ~~[(d) "State taxable income" means a nonresident individual's federal taxable income~~
 1704 ~~after making the:]~~

1705 ~~[(i) additions and subtractions required by Section 59-10-114; and]~~

1706 ~~[(ii) adjustments required by Section 59-10-115.]~~

1707 ~~[(e) "Unapportioned state tax" means the product of the:]~~

1708 ~~[(i) difference between:]~~

1709 ~~[(A) a nonresident individual's state taxable income; and]~~

1710 ~~[(B) if the nonresident individual described in Subsection (1)(c)(i)(A) is a~~
 1711 ~~servicemember, compensation the servicemember receives for military service if the~~
 1712 ~~servicemember is servicing in compliance with military orders; and]~~

1713 ~~[(ii) tax rate imposed under Section 59-10-104.]~~

1714 ~~[(2)] (1) Except as provided in Subsection [(3)] (2) [or Part 12, Single Rate Individual~~
 1715 ~~Income Tax Act], a tax is imposed on a nonresident individual in an amount equal to the~~
 1716 ~~product of the [nonresident individual's]:~~

1717 ~~[(a) unapportioned state tax; and]~~

1718 ~~[(b) state income tax percentage.]~~

1719 ~~(a) nonresident individual's state taxable income; and~~

1720 ~~(b) percentage listed in Subsection 59-10-104(2).~~

1721 ~~[(3)] (2) This section does not apply to a nonresident individual exempt from taxation~~
 1722 ~~under Section 59-10-104.1.~~

1723 ~~[(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
 1724 ~~for purposes of Subsection (1), the commission may by rule define what constitutes~~
 1725 ~~compensation.]~~

1726 Section 28. Section **59-10-117** is amended to read:

1727 **59-10-117. State taxable income derived from Utah sources.**

1728 (1) For purposes of Section 59-10-116, adjusted gross state taxable income ~~[derived~~
 1729 ~~from Utah sources]~~ includes those items includable in adjusted gross state taxable income
 1730 attributable to or resulting from:

1731 (a) the ownership in this state of any interest in real or tangible personal property,
1732 including real property or property rights from which [^u]gross income from mining[^u] as
1733 defined by Section 613(c), Internal Revenue Code, is derived; or

1734 (b) the carrying on of a business, trade, profession, or occupation in this state.

1735 (2) For the purposes of Subsection (1):

1736 (a) income from intangible personal property, including annuities, dividends, interest,
1737 and gains from the disposition of intangible personal property shall constitute income derived
1738 from Utah sources only to the extent that [~~such~~] the income is from property employed in a
1739 trade, business, profession, or occupation carried on in this state;

1740 (b) [~~deductions~~] a deduction with respect to a capital [~~losses~~] loss, net long-term capital
1741 [~~gains~~] gain, [~~and~~] or net operating [~~losses~~] loss shall be based solely on income, gain, loss, and
1742 deduction connected with Utah sources, under rules prescribed by the commission in
1743 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, but otherwise
1744 shall be determined in the same manner as the corresponding federal deductions;

1745 (c) [~~salaries, wages, commissions, and~~] a salary, wage, commission, or compensation
1746 for personal services rendered outside this state [~~shall~~] may not be considered to be derived
1747 from Utah sources;

1748 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and
1749 deduction derived from or connected with Utah sources shall be determined under Section
1750 59-10-118;

1751 (e) a nonresident, other than a dealer holding property primarily for sale to customers
1752 in the ordinary course of the dealer's trade or business, may not be considered to carry on a
1753 trade, business, profession, or occupation in this state solely by reason of the purchase or sale
1754 of property for the nonresident's own account;

1755 (f) if a trade, business, profession, or occupation is carried on partly within and partly
1756 without this state, [~~items~~] an item of income, gain, loss, [~~and deductions~~] or a deduction
1757 derived from or connected with Utah sources shall be determined in accordance with [~~the~~
1758 ~~provisions of~~] Section 59-10-118;

1759 (g) a nonresident partner's distributive share of partnership income, gain, loss, and
1760 deduction derived from or connected with Utah sources shall be determined under Section
1761 [~~59-10-303~~] 59-10-1405;

1762 (h) the share of a nonresident estate or trust [~~and nonresident beneficiaries~~] or a
1763 nonresident beneficiary of any estate or trust in income, gain, loss, [~~and~~] or deduction derived
1764 from or connected with Utah sources shall be determined under Section 59-10-207; and

1765 (i) any dividend, interest, or distributive share of income, gain, or loss from a real
1766 estate investment trust, as defined in Section [~~59-7-116.5~~] 57-7-101, distributed or allocated to
1767 a nonresident investor in the trust, including any shareholder, beneficiary, or owner of a
1768 beneficial interest in the trust, shall be income from intangible personal property under
1769 Subsection (2)(a), and shall constitute income derived from Utah sources only to the extent the
1770 nonresident investor is employing its beneficial interest in the trust in a trade, business,
1771 profession, or occupation carried on by the investor in this state.

1772 Section 29. Section **59-10-118** is amended to read:

1773 **59-10-118. Division of income for tax purposes.**

1774 (1) As used in this section [~~unless the context otherwise requires~~]:

1775 (a) "Business income" means income arising from transactions and activity in the
1776 regular course of [~~the~~] a taxpayer's trade or business and includes income from tangible and
1777 intangible property if the acquisition, management, and disposition of the property constitutes
1778 integral parts of the taxpayer's regular trade or business operations.

1779 (b) "Commercial domicile" means the principal place from which the trade or business
1780 of [~~the~~] a taxpayer is directed or managed.

1781 [~~(c) "Compensation" means wages, salaries, commissions, and any other form of~~
1782 ~~remuneration paid to employee for personal services.]~~

1783 [~~(d)~~] (c) "Nonbusiness income" means all income other than business income.

1784 [~~(e)~~] (d) "Sales" means all gross receipts of [~~the~~] a taxpayer not allocated under
1785 Subsections (3) through (7).

1786 [~~(f)~~] (e) "State" means any state of the United States, the District of Columbia, the
1787 commonwealth of Puerto Rico, [~~and~~] or any possession of the United States.

1788 (2) [~~Any~~] A taxpayer having business income [~~which~~] that is taxable both within and
1789 without this state, shall allocate and apportion [~~his~~] the taxpayer's net income as provided in
1790 this section.

1791 (3) Rents and royalties from real or tangible personal property, capital gains, interest,
1792 dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness

1793 income, shall be allocated as provided in Subsections (4) through (7).

1794 (4) (a) Net rents and royalties from real property located in this state are allocable to
1795 this state.

1796 (b) Net rents and royalties from tangible personal property are allocable to this state:

1797 (i) if and to the extent that the property is utilized in this state; or

1798 (ii) in their entirety if the taxpayer's commercial domicile is in this state and the

1799 taxpayer is not organized under the laws of or taxable in the state in which the property is
1800 utilized.

1801 (c) The extent of utilization of tangible personal property in a state is determined by
1802 multiplying the rents and royalties by a fraction, the numerator of which is the number of days
1803 of physical location of the property in the state during the rental or royalty period in the taxable
1804 year and the denominator of which is the number of days of physical location of the property
1805 everywhere during all rental or royalty periods in the taxable year. If the physical location of
1806 the property during the rental or royalty period is unknown or unascertainable by the taxpayer,
1807 tangible personal property is utilized in the state in which the property was located at the time
1808 the rental or royalty payer obtained possession.

1809 (5) (a) Capital gains and losses from sales of real property located in this state are
1810 allocable to this state.

1811 (b) Capital gains and losses from sales of tangible personal property are allocable to
1812 this state if:

1813 (i) the property ~~had~~ has a situs in this state at the time of the sale; or

1814 (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in
1815 the state in which the property had a situs.

1816 (c) Capital gains and losses from sales of intangible personal property are allocable to
1817 this state if the taxpayer's commercial domicile is in this state.

1818 (6) Interest and dividends are allocable to this state if the taxpayer's commercial
1819 domicile is in this state.

1820 (7) (a) Patent and copyright royalties are allocable to this state:

1821 (i) if and to the extent that the patent or copyright is utilized by the payer in this state;

1822 or

1823 (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in

1824 which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

1825 (b) A patent is utilized in a state to the extent that it is employed in production,
1826 fabrication, manufacturing, or other processing in the state or to the extent that a patented
1827 product is produced in the state. If the basis of receipts from patent royalties does not permit
1828 allocation to states or if the accounting procedures do not reflect states of utilization, the patent
1829 is utilized in the state in which the taxpayer's commercial domicile is located.

1830 (8) All business income shall be apportioned to this state [~~by multiplying the income~~
1831 ~~by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales~~
1832 ~~factor, and the denominator of which is three]~~ using the same methods, procedures, and
1833 requirements of Sections 59-7-311 through 59-7-320.

1834 [~~(9) The property factor is a fraction, the numerator of which is the average value of the~~
1835 ~~taxpayer's real and tangible personal property owned or rented and used in this state during the~~
1836 ~~tax period and the denominator of which is the average value of all the taxpayer's real and~~
1837 ~~tangible personal property owned or rented and used during the tax period.]~~

1838 [~~(10) Property owned by the taxpayer is valued at its original cost. Property rented by~~
1839 ~~the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the~~
1840 ~~annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from~~
1841 ~~subrentals.]~~

1842 [~~(11) The average value of property shall be determined by averaging the values at the~~
1843 ~~beginning and ending of the tax period but the commission may require the averaging of~~
1844 ~~monthly values during the tax period, if reasonably required to reflect properly the average~~
1845 ~~value of the taxpayer's property.]~~

1846 [~~(12) The payroll factor is a fraction, the numerator of which is the total amount paid in~~
1847 ~~this state during the tax period by the taxpayer for compensation, and the denominator of which~~
1848 ~~is the total compensation paid everywhere during the tax period.]~~

1849 [~~(13) Compensation is paid in this state if:]~~

1850 [~~(a) the individual's service is performed entirely within the state; or]~~

1851 [~~(b) the individual's service is performed both within and without the state, but the~~
1852 ~~service performed without the state is incidental to the individual's service within the state; or]~~

1853 [~~(c) some of the service is performed in the state and:]~~

1854 [~~(i) the base of operations or, if there is no base of operations, the place from which the~~

1855 ~~service is directed or controlled is in the state; or]~~

1856 ~~[(ii) the base of operations or the place from which the service is directed or controlled~~
1857 ~~is not in any state in which some part of the service is performed, but the individual's residence~~
1858 ~~is in this state.]~~

1859 ~~[(14) The sales factor is a fraction, the numerator of which is the total sales of the~~
1860 ~~taxpayer in this state during the tax period, and the denominator of which is the total sales of~~
1861 ~~the taxpayer everywhere during the tax period.]~~

1862 ~~[(15) Sales of tangible personal property are in this state if the property is delivered or~~
1863 ~~shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of the~~
1864 ~~sale.]~~

1865 ~~[(16) Sales, other than sales of tangible personal property, are in this state if:]~~

1866 ~~[(a) the income-producing activity is performed in this state; or]~~

1867 ~~[(b) the income-producing activity is performed both in and outside this state and a~~
1868 ~~greater proportion of the income-producing activity is performed in this state than in any other~~
1869 ~~state, based on costs of performance.]~~

1870 ~~[(17) If the allocation and apportionment provisions of this chapter do not fairly~~
1871 ~~represent the extent of the taxpayer's business activity in this state, the taxpayer may petition~~
1872 ~~for or the commission may require, in respect of all or any part of the taxpayer's business~~
1873 ~~activity, if reasonable:]~~

1874 ~~[(a) separate accounting;]~~

1875 ~~[(b) the exclusion of any one or more of the factors;]~~

1876 ~~[(c) the inclusion of one or more additional factors which will fairly represent the~~
1877 ~~taxpayer's business activity in this state; or]~~

1878 ~~[(d) the employment of any other method to effectuate an equitable allocation and~~
1879 ~~apportionment of the taxpayer's income.]~~

1880 Section 30. Section **59-10-119** is amended to read:

1881 **59-10-119. Returns by husband and wife, either or both of whom is a**
1882 **nonresident.**

1883 (1) If the ~~[federal taxable]~~ adjusted gross income of a husband and wife ~~[(who are~~
1884 ~~both nonresidents of this state)]~~ is reported or determined on separate federal individual
1885 income tax returns, ~~[their]~~ the husband's and wife's state taxable incomes in this state shall be

1886 separately determined.

1887 (2) If the ~~[federal taxable]~~ adjusted gross income of a husband and wife ~~[who are~~
1888 both nonresidents⁽⁷⁾ of this state is reported or determined on a joint federal individual income
1889 tax return ~~[their]~~, the husband's and wife's tax shall be reported or determined in this state on a
1890 joint return.

1891 (3) (a) If ~~[either husband or wife]~~ one spouse is a nonresident of this state and the other
1892 spouse is a resident of this state, separate taxes shall be determined on ~~[their]~~ each spouse's
1893 separate state taxable incomes on [such forms as the commission shall prescribe, unless both
1894 elect to determine their state taxable income as if both were residents] forms prescribed by the
1895 commission.

1896 (b) Notwithstanding Subsection (3)(a), a husband and wife may elect to be considered
1897 to be residents of this state for purposes of determining state taxable income for a taxable year.

1898 (c) If ~~[a husband and wife (one being a resident, the other a nonresident)]~~ one spouse
1899 who is a nonresident of this state and the other spouse who is a resident of this state file a joint
1900 federal income tax return, but determine ~~[their]~~ state taxable income separately, ~~[they]~~ the
1901 spouses shall compute their taxable incomes in this state as if their ~~[federal taxable]~~ adjusted
1902 gross incomes had been determined separately.

1903 Section 31. Section **59-10-120** is amended to read:

1904 **59-10-120. Change of status as resident or nonresident.**

1905 (1) If an individual changes ~~[his]~~ the individual's status during ~~[his]~~ the taxable year
1906 from resident to nonresident or from nonresident to resident, the commission may by rule,
1907 made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, require
1908 ~~[him]~~ the individual to file one return for the portion of the taxable year during which ~~[he]~~ the
1909 individual is a resident and another return for the portion of the taxable year during which ~~[he]~~
1910 the individual is a nonresident.

1911 (2) ~~[Except as provided in Subsection (3) the]~~ The taxable income of the individual
1912 described in Subsection (1) shall be determined as provided in this chapter for residents and for
1913 nonresidents as if the individual's taxable year for federal income tax purposes were limited to
1914 the period of ~~[his]~~ the individual's resident and nonresident status respectively.

1915 ~~[(3) There shall be included in determining taxable income from sources within or~~
1916 ~~without this state, as the case may be, income, gain, loss, or deduction accrued prior to the~~

1917 ~~change of status, even though not otherwise includable or allowable in respect of the period~~
1918 ~~prior to such change, but the taxation or deduction of items received or accrued prior to the~~
1919 ~~change of status shall not be affected by the change.]~~

1920 Section 32. Section **59-10-121** is amended to read:

1921 **59-10-121. Proration when two returns required.**

1922 ~~[Where two returns are required to be filed as provided in]~~ If an individual is required
1923 to file two returns for a taxable year under Section 59-10-120:

1924 (1) personal exemptions and the standard deduction as used on the federal individual
1925 income tax return shall be prorated between the two returns, under rules prescribed by the
1926 commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to
1927 reflect the proportions of the taxable year during which the individual was a resident and a
1928 nonresident; and

1929 (2) the total amount of the taxes due ~~[thereon shall]~~ on the two returns may not be less
1930 than the total amount of the taxes that would be due if the total of the taxable incomes reported
1931 on the two returns ~~[were includable]~~ had been included in one return.

1932 Section 33. Section **59-10-122** is amended to read:

1933 **59-10-122. Taxable year.**

1934 (1) For purposes of ~~[the]~~ a tax imposed by this chapter, [a taxpayer's] the taxable year
1935 of a resident or nonresident individual or resident or nonresident estate or trust shall be the
1936 same as ~~[his]~~ the taxable year of the resident or nonresident individual or resident or
1937 nonresident estate or trust for federal income tax purposes.

1938 (2) (a) If ~~[a taxpayer's]~~ the taxable year of a resident or nonresident individual or
1939 resident or nonresident estate or trust is changed for federal income tax purposes, ~~[his]~~ that
1940 taxable year for purposes of [the] a tax imposed by this chapter shall be [similarly] changed in
1941 the same manner as the change for federal income tax purposes.

1942 (b) If a change in a taxable year results in a taxable period of less than 12 months for
1943 federal income tax purposes, ~~[the]~~ that same taxable period shall be used in computing ~~[the]~~ a
1944 tax imposed by this chapter.

1945 Section 34. Section **59-10-123** is amended to read:

1946 **59-10-123. Accounting method.**

1947 (1) For purposes of ~~[the]~~ a tax imposed by this chapter, a [taxpayer's] resident or

1948 nonresident individual's or resident or nonresident estate's or trust's method of accounting shall
1949 be the same as the method [~~employed~~] of accounting the resident or nonresident individual or
1950 resident or nonresident estate or trust uses for federal income tax purposes.

1951 (2) If a [~~taxpayer's~~] resident or nonresident individual's or resident or nonresident
1952 estate's or trust's method of accounting is changed for federal income tax purposes, [~~his~~] the
1953 resident or nonresident individual's or resident or nonresident estate's or trust's method of
1954 accounting shall be [~~similarly~~] changed [~~and reflected in each return filed for Utah individual~~
1955 ~~income tax purposes~~] in the same manner:

1956 (a) for purposes of a tax imposed by this chapter; and

1957 (b) for any taxable year for which [~~such~~] the change in the method of accounting is
1958 [~~reflected in his return~~] made for federal income tax purposes.

1959 Section 35. Section **59-10-124** is amended to read:

1960 **59-10-124. Adjustments between taxable years after change in accounting**
1961 **method.**

1962 (1) In computing [~~a taxpayer's~~] a resident or nonresident individual's or resident or
1963 nonresident estate's or trust's state taxable income for [~~any~~] a taxable year under a method of
1964 accounting different from the method under which the [~~taxpayer's~~] resident or nonresident
1965 individual's or resident or nonresident estate's or trust's state taxable income [~~for the previous~~
1966 ~~year] was computed[, there shall be taken into account those adjustments which are~~
1967 ~~determined, under rules prescribed by the commission, to be necessary solely by reason of the~~
1968 ~~change, to prevent double inclusion or exclusion of an item of gross income, or double~~
1969 ~~allowance or disallowance of an item of deduction or credit.] for the previous taxable year,~~

1970 state taxable income shall be increased or decreased:
1971 (a) to prevent double inclusion or exclusion of an item of gross income as a result of
1972 the change in the method of accounting; or

1973 (b) to prevent double allowance or disallowance of a subtraction from or addition to
1974 gross income as a result of the change in the method of accounting.

1975 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1976 commission may make rules for making an increase or decrease required by Subsection (1).

1977 Section 36. Section **59-10-125** is amended to read:

1978 **59-10-125. Adjustment after change of accounting method.**

1979 (1) If a taxpayer's method of accounting is changed, other than from an accrual to an
1980 installment method, any additional tax that results from adjustments determined to be necessary
1981 solely by reason of the change ~~shall~~ may not be greater than if ~~such~~ those adjustments were
1982 ratably allocated and included for the taxable year of the change and the preceding taxable
1983 years, not in excess of two, during which the taxpayer used the method of accounting from
1984 which the change is made.

1985 (2) If a taxpayer's method of accounting is changed from an accrual to an installment
1986 method, any additional tax for the taxable year of ~~such~~ the change ~~of~~ in the method of
1987 accounting and for any subsequent taxable year that is attributable to the receipt of installment
1988 payments properly accrued in a prior taxable year, shall be reduced by the portion of tax for any
1989 prior taxable year attributable to the accrual of such installment payments, under rules
1990 prescribed by the commission in accordance with Title 63, Chapter 46a, Utah Administrative
1991 Rulemaking Act.

1992 Section 37. Section **59-10-126** is amended to read:

1993 **59-10-126. Business entities not subject to tax -- Exceptions.**

1994 (1) ~~[An association, trust, or other unincorporated organization]~~ A business entity that
1995 is taxable as a corporation for federal income tax purposes ~~shall~~:

1996 (a) may not be subject to the tax imposed by this chapter~~[-but shall be]; and~~

1997 (b) is subject to ~~[the provisions of Title 59,]~~ Chapter 7, Corporate Franchise and
1998 Income Taxes.

1999 ~~[(2) To the extent an association, trust, or other unincorporated organization which by~~
2000 ~~reason of its purposes or activities is exempt from federal income tax, it shall be exempt from~~
2001 ~~the tax imposed by this chapter, but to the extent that such an otherwise exempt organization~~
2002 ~~has, or is treated as having, income subject to tax for federal tax purposes, it shall be subject to~~
2003 ~~the provisions of Title 59, Chapter 7.]~~

2004 (2) A business entity that is exempt from federal income taxation is exempt from the
2005 tax imposed by this chapter.

2006 (3) Notwithstanding Subsection (2), if a business entity that is exempt from federal
2007 income taxation has income that is subject to federal income taxation, that income is subject to
2008 taxation under Chapter 7, Corporate Franchise and Income Taxes.

2009 Section 38. Section **59-10-201** is amended to read:

2010 **59-10-201. Taxation of resident trusts and estates.**

2011 (1) ~~[A]~~ Except as provided in Subsection (2), a tax determined in accordance with the
 2012 [rates] rate prescribed by [Section 59-10-104 for individuals filing separately] Subsection
 2013 59-10-104(2)(b) is imposed for each taxable year on the state taxable income of each resident
 2014 estate or trust~~[, except for trusts].~~

2015 (2) The following are not subject to a tax imposed by this part:

2016 (a) a resident estate or trust that is not required to file a federal income tax return for
 2017 estates and trusts for the taxable year; or

2018 (b) a resident trust taxed as [corporations] a corporation.

2019 ~~[(2)]~~ (3) A resident estate or trust shall be allowed the credit provided in Section
 2020 59-10-1003, relating to an income tax imposed by another state, except that the limitation shall
 2021 be computed by reference to the taxable income of the estate or trust.

2022 ~~[(3)]~~ (4) The property of the Utah Educational Savings Plan trust established in Title
 2023 53B, Chapter 8a, Higher Education Savings Incentive Program, and its income from operations
 2024 and investments are exempt from all taxation by the state under this chapter.

2025 Section 39. Section **59-10-201.1** is amended to read:

2026 **59-10-201.1. State taxable income of a resident estate or trust defined.**

2027 ~~[The]~~ For a taxable year, the state taxable income of a resident estate or trust means [its
 2028 federal taxable] the unadjusted income [as calculated in Section 641 (a) and (b), Internal
 2029 Revenue Code] of the resident estate or trust for that taxable year, as adjusted by Sections
 2030 59-10-202, 59-10-209.1, and 59-10-210.

2031 Section 40. Section **59-10-202** is amended to read:

2032 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**
 2033 **nonresident estate or trust.**

2034 (1) There shall be added to~~[federal taxable]~~ unadjusted income of a resident or
 2035 nonresident estate or trust:

2036 ~~[(a) the amount of any income tax imposed by this or any predecessor Utah individual~~
 2037 ~~income tax law and the amount of any income tax imposed by the laws of another state, the~~
 2038 ~~District of Columbia, or a possession of the United States, to the extent deducted from federal~~
 2039 ~~adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal~~
 2040 ~~taxable income;]~~

2041 ~~[(b)]~~ (a) a lump sum distribution allowable as a deduction under Section 402(d)(3) ~~[of~~
 2042 ~~the]~~, Internal Revenue Code, to the extent deductible under Section 62(a)(8) ~~[of the]~~, Internal
 2043 Revenue Code, in determining adjusted gross income;

2044 ~~[(c)]~~ (b) except as provided in Subsection (3), ~~[for taxable years beginning on or after~~
 2045 ~~January 1, 2003,]~~ for bonds, notes, and other evidences of indebtedness acquired on or after
 2046 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
 2047 one or more of the following entities:

2048 (i) a state other than this state;

2049 (ii) the District of Columbia;

2050 (iii) a political subdivision of a state other than this state; or

2051 (iv) an agency or instrumentality of an entity described in Subsections (1)~~[(c)]~~(b)(i)
 2052 through (iii);

2053 ~~[(d)]~~ (c) any portion of federal taxable income for a taxable year if that federal taxable
 2054 income is derived from stock:

2055 (i) in an S corporation; and

2056 (ii) that is held by an electing small business trust;

2057 ~~[(e)]~~ (d) the amount withdrawn under Title 53B, Chapter 8a, Higher Education
 2058 Savings Incentive Program, from the account of a resident or nonresident estate or trust that is
 2059 an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount
 2060 is withdrawn, if that amount withdrawn from the account of the resident or nonresident estate
 2061 or trust that is the account owner:

2062 ~~[(A)]~~ (i) is not expended for higher education costs as defined in Section 53B-8a-102;
 2063 and

2064 ~~[(B)]~~ (ii) is:

2065 (A) subtracted by the resident or nonresident estate or trust:

2066 (I) that is the account owner; and

2067 ~~[(H) in accordance with Subsection (2)(j)(i); and]~~

2068 ~~[(ii) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings~~
 2069 ~~Incentive Program, from the account of a resident or nonresident estate or trust that is an~~
 2070 ~~account owner as defined in Section 53B-8a-102, for the taxable year beginning on or after~~
 2071 ~~January 1, 2007, but beginning on or before December 31, 2007, if that amount withdrawn~~

2072 from the account of the resident or nonresident estate or trust that is the account owner;]

2073 [~~(A) is not expended for higher education costs as defined in Section 53B-8a-102; and]~~

2074 [~~(B) is subtracted by the resident or nonresident estate or trust;~~]

2075 [~~(F) that is the account owner; and]~~

2076 [~~(H) in accordance with Subsection (2)(j)(ii); and]~~

2077 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a

2078 taxable year beginning on or before December 31, 2007; or

2079 (B) used as the basis for the resident or nonresident estate or trust that is the account

2080 owner to claim a tax credit under Section 59-10-1017; and

2081 [~~(f)~~] (e) any fiduciary adjustments required by Section 59-10-210.

2082 (2) There shall be subtracted from [~~federal taxable~~] unadjusted income of a resident or

2083 nonresident estate or trust:

2084 (a) the interest or a dividend on obligations or securities of the United States and its

2085 possessions or of any authority, commission, or instrumentality of the United States, to the

2086 extent that interest or dividend is included in gross income for federal income tax purposes for

2087 the taxable year but exempt from state income taxes under the laws of the United States, but

2088 the amount subtracted under this Subsection (2) shall be reduced by any interest on

2089 indebtedness incurred or continued to purchase or carry the obligations or securities described

2090 in this Subsection (2), and by any expenses incurred in the production of interest or dividend

2091 income described in this Subsection (2) to the extent that such expenses, including amortizable

2092 bond premiums, are deductible in determining federal taxable income;

2093 [~~(b) 1/2 of the net amount of any income tax paid or payable to the United States after~~

2094 ~~all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the~~

2095 ~~same taxable year;]~~

2096 [~~(c)~~] (b) income of an irrevocable resident trust if:

2097 (i) the income would not be treated as state taxable income derived from Utah sources

2098 under Section 59-10-204 if received by a nonresident trust;

2099 (ii) the trust first became a resident trust on or after January 1, 2004;

2100 (iii) no assets of the trust were held, at any time after January 1, 2003, in another

2101 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

2102 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

2103 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the
 2104 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,
 2105 Subchapter J, Subpart E of the Internal Revenue Code; and

2106 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on
 2107 indebtedness incurred or continued to purchase or carry the assets generating the income
 2108 described in this Subsection (2)(b), and by any expenses incurred in the production of income
 2109 described in this Subsection (2)(b), to the extent that those expenses, including amortizable
 2110 bond premiums, are deductible in determining federal taxable income;

2111 ~~[(d)]~~ (c) if the conditions of Subsection (4)(a) are met, the amount of income of a
 2112 resident or nonresident estate or trust derived from a deceased Ute tribal member:

2113 (i) during a time period that the Ute tribal member resided on homesteaded land
 2114 diminished from the Uintah and Ouray Reservation; and

2115 (ii) from a source within the Uintah and Ouray Reservation;

2116 ~~[(e) (i) for taxable years beginning on or after January 1, 2003, the total amount of a
 2117 resident or nonresident estate's or trust's short-term capital gain or long-term capital gain on a
 2118 capital gain transaction:]~~

2119 ~~[(A) that occurs on or after January 1, 2003;]~~

2120 ~~[(B) if 70% or more of the gross proceeds of the capital gain transaction are expended:]~~

2121 ~~[(f) to purchase qualifying stock in a Utah small business corporation; and]~~

2122 ~~[(H) within a 12-month period after the day on which the capital gain transaction
 2123 occurs; and]~~

2124 ~~[(C) if, prior to the purchase of the qualifying stock described in Subsection
 2125 (2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in
 2126 the Utah small business corporation that issued the qualifying stock; and]~~

2127 ~~[(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
 2128 the commission may make rules:]~~

2129 ~~[(A) defining the term "gross proceeds"; and]~~

2130 ~~[(B) for purposes of Subsection (2)(e)(i)(C), prescribing the circumstances under which
 2131 a resident or nonresident estate or trust has an ownership interest in a Utah small business
 2132 corporation;]~~

2133 ~~[(f) for the taxable year beginning on or after January 1, 2005, but beginning on or~~

2134 ~~before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or~~
2135 ~~trust that is derived from a deceased qualifying military servicemember:]~~
2136 ~~[(i) for service:]~~
2137 ~~[(A) as a qualifying military servicemember; or]~~
2138 ~~[(B) under an order into active service in accordance with Section 39-1-5; and]~~
2139 ~~[(ii) to the extent that income is included in total income on that resident or nonresident~~
2140 ~~estate's or trust's federal income tax return for estates and trusts for that taxable year;]~~
2141 ~~[(g)] (d) any amount:~~
2142 (i) received by a resident or nonresident estate or trust;
2143 (ii) that constitutes a refund of taxes imposed by:
2144 (A) a state; or
2145 (B) the District of Columbia; and
2146 (iii) to the extent that amount is included in total income on that resident or nonresident
2147 estate's or trust's federal tax return for estates and trusts for that taxable year;
2148 ~~[(h)] (e) the amount of a railroad retirement benefit:~~
2149 (i) paid:
2150 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
2151 seq.;

2152 (B) to a resident or nonresident estate or trust derived from a deceased resident or
2153 nonresident individual; and
2154 (C) for the taxable year; and
2155 (ii) to the extent that railroad retirement benefit is included in total income on that
2156 resident or nonresident estate's or trust's federal tax return for estates and trusts;

2157 ~~[(i)] (f) an amount:~~
2158 (i) received by a resident or nonresident estate or trust if that amount is derived from a
2159 deceased enrolled member of an American Indian tribe; and
2160 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
2161 part on that amount in accordance with:
2162 (A) federal law;
2163 (B) a treaty; or
2164 (C) a final decision issued by a court of competent jurisdiction;

2165 ~~[(j) (i) subject to Subsection (1)(e)(i), for taxable years beginning on or after January 1,~~
2166 ~~2007, the amount of a qualified investment as defined in Section 53B-8a-102 that:]~~

2167 ~~[(A) a resident or nonresident estate or trust that is an account owner as defined in~~
2168 ~~Section 53B-8a-102 makes during the taxable year;]~~

2169 ~~[(B) the resident or nonresident estate or trust described in Subsection (2)(j)(i)(A) does~~
2170 ~~not deduct on a federal tax return for estates and trusts; and]~~

2171 ~~[(C) does not exceed the maximum amount of the qualified investment that may be~~
2172 ~~subtracted from federal taxable income for a taxable year in accordance with Subsections~~
2173 ~~53B-8a-106(1)(e) and (f); and]~~

2174 ~~[(ii) subject to Subsection (1)(e)(ii), for the taxable year beginning on or after January~~
2175 ~~1, 2007, but beginning on or before December 31, 2007 only, and in addition to any subtraction~~
2176 ~~a resident or nonresident estate or trust that is an account owner as defined in Section~~
2177 ~~53B-8a-102 makes in accordance with Subsection (2)(j)(i), the amount of a qualified~~
2178 ~~investment as defined in Section 53B-8a-102 that:]~~

2179 ~~[(A) a resident or nonresident estate or trust that is an account owner as defined in~~
2180 ~~Section 53B-8a-102 could have subtracted under Subsection (2)(j)(i) for the taxable year~~
2181 ~~beginning on or after January 1, 2006, but beginning on or before December 31, 2006, had the~~
2182 ~~subtraction under Subsection (2)(j)(i) been in effect for the taxable year beginning on or after~~
2183 ~~January 1, 2006, but beginning on or before December 31, 2006;]~~

2184 ~~[(B) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A)~~
2185 ~~makes during the taxable year beginning on or after January 1, 2006, but beginning on or~~
2186 ~~before December 31, 2006;]~~

2187 ~~[(C) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A) does~~
2188 ~~not deduct on a federal tax return for estates and trusts; and]~~

2189 ~~[(D) does not exceed the maximum amount of the qualified investment that may be~~
2190 ~~subtracted from federal taxable income:]~~

2191 ~~[(F) for the taxable year beginning on or after January 1, 2006, but beginning on or~~
2192 ~~before December 31, 2006; and]~~

2193 ~~[(H) in accordance with Subsections 53B-8a-106(1)(e) and (f); and]~~

2194 ~~(g) the amount that a qualified nongrantor charitable lead trust deducts under Section~~
2195 ~~642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the~~

2196 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for
2197 the taxable year; and

2198 ~~(h)~~ (h) any fiduciary adjustments required by Section 59-10-210.

2199 (3) Notwithstanding Subsection (1)~~(c)~~(b), interest from bonds, notes, and other
2200 evidences of indebtedness issued by an entity described in Subsections (1)~~(c)~~(b)(i) through
2201 (iv) may not be added to ~~federal taxable~~ unadjusted income of a resident or nonresident estate
2202 or trust if, as annually determined by the commission:

2203 (a) for an entity described in Subsection (1)~~(c)~~(b)(i) or (ii), the entity and all of the
2204 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
2205 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

2206 (b) for an entity described in Subsection (1)~~(c)~~(b)(iii) or (iv), the following do not
2207 impose a tax based on income on any part of the bonds, notes, and other evidences of
2208 indebtedness of this state:

2209 (i) the entity; or

2210 (ii) (A) the state in which the entity is located; or

2211 (B) the District of Columbia, if the entity is located within the District of Columbia.

2212 (4) (a) A subtraction for an amount described in Subsection (2)~~(d)~~(c) is allowed only
2213 if:

2214 (i) the income is derived from a deceased Ute tribal member; and

2215 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
2216 requirements of this Subsection (4).

2217 (b) The agreement described in Subsection (4)(a):

2218 (i) may not:

2219 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

2220 (B) provide a subtraction under this section greater than or different from the
2221 subtraction described in Subsection (2)~~(d)~~(c); or

2222 (C) affect the power of the state to establish rates of taxation; and

2223 (ii) shall:

2224 (A) provide for the implementation of the subtraction described in Subsection
2225 (2)~~(d)~~(c);

2226 (B) be in writing;

2227 (C) be signed by:

2228 (I) the governor; and

2229 (II) the chair of the Business Committee of the Ute tribe;

2230 (D) be conditioned on obtaining any approval required by federal law; and

2231 (E) state the effective date of the agreement.

2232 (c) (i) The governor shall report to the commission by no later than February 1 of each
2233 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
2234 in effect.

2235 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
2236 subtraction permitted under Subsection (2)~~(c)~~(c) is not allowed for taxable years beginning
2237 on or after the January 1 following the termination of the agreement.

2238 (d) For purposes of Subsection (2)~~(c)~~(c) and in accordance with Title 63, Chapter
2239 46a, Utah Administrative Rulemaking Act, the commission may make rules:

2240 (i) for determining whether income is derived from a source within the Uintah and
2241 Ouray Reservation; and

2242 (ii) that are substantially similar to how adjusted gross income derived from Utah
2243 sources is determined under Section 59-10-117.

2244 Section 41. Section **59-10-204** is amended to read:

2245 **59-10-204. State taxable income of a nonresident estate or trust.**

2246 ~~[The]~~ For a taxable year, the state taxable income of a nonresident estate or trust [shall
2247 be its state taxable] is an amount calculated by:

2248 (1) determining the unadjusted income [as calculated in Section 59-10-201.1;] of the
2249 nonresident estate or trust for that taxable year after making the adjustments required by:

2250 (a) Section 59-10-202;

2251 (b) Section 59-10-207;

2252 (c) Section 59-10-209.1; or

2253 (d) Section 59-10-210; and

2254 (2) calculating the portion of the amount determined under Subsection (1) that is
2255 derived from Utah sources determined in accordance with the principles of Section 59-10-117[;
2256 and adjusted as provided in Section 59-10-207].

2257 Section 42. Section **59-10-205** is amended to read:

2258 **59-10-205. Tax on income derived from Utah sources.**

2259 [~~A tax~~] (1) Except as provided in Subsection (2), a tax is imposed on a nonresidential
 2260 estate or trust in an amount equal to the product of:

2261 (a) the nonresident estate's or trust's state taxable income~~[, as calculated in Section~~
 2262 ~~59-10-204, of every nonresident estate or trust in accordance with the rates prescribed in~~
 2263 ~~Section 59-10-104 for individuals filing separately. The tax shall only be applied to income~~
 2264 ~~derived from Utah sources as adjusted by Section 59-10-207, including such items from~~
 2265 ~~another estate or trust of which the first estate or trust is a beneficiary.]~~ as determined under
 2266 Section 59-10-204; and

2267 (b) the percentage listed in Subsection 59-10-104(2).

2268 (2) The following are not subject to a tax imposed by this part:

2269 (a) a nonresident estate or trust that is not required to file a federal income tax return
 2270 for estates and trusts for the taxable year; or

2271 (b) a nonresident trust taxed as a corporation.

2272 Section 43. Section **59-10-207** is amended to read:

2273 **59-10-207. Share of a nonresident estate or trust and beneficiaries in state taxable**
 2274 **income.**

2275 (1) The following shall be determined as provided in this section:

2276 [~~(1) The~~](a) the share of a nonresident estate or trust [and its beneficiaries in items] or
 2277 a nonresident beneficiary of a nonresident estate or trust in an item of income, gain, loss, [and]
 2278 or deduction [entering into the definition of] that constitutes distributable net income; and [the
 2279 share]

2280 (b) for purposes of Section 59-10-116, the share of a nonresident beneficiary of any
 2281 estate or trust in estate or trust income, gain, loss, [and] or deduction [shall be determined as
 2282 follows:].

2283 (2) (a) [~~To~~] The modifications described in Sections 59-10-202 and 59-10-210 shall be
 2284 added to or subtracted from the amount of [items] an item of income, gain, loss, [and] or
 2285 deduction that [enter into the definition of] constitutes distributable net income [there shall be
 2286 added or subtracted, as the case may be, the modifications described in Sections 59-10-202 and
 2287 59-10-210] to the extent [they relate to items] the item relates to an item of income, gain, loss,
 2288 [and] or deduction that also [enter into the definition of] constitutes distributable net income.

2289 ~~[No]~~

2290 (b) A modification ~~[shall]~~ may not be made under this section ~~[that has the effect of~~
2291 ~~duplicating]~~ if the modification duplicates an item already reflected in ~~[the definition of]~~
2292 distributable net income.

2293 ~~[(b)]~~ (3) (a) The amount determined under Subsection ~~[(1)]~~ (2)(a) shall be allocated
2294 among the estate or trust and ~~[its]~~ the beneficiaries ~~[(including solely for the purpose of this~~
2295 ~~allocation, resident beneficiaries)]~~ of the estate or trust, including a resident beneficiary, in
2296 proportion to ~~[their respective shares of federal]~~ the estate's, trust's, or beneficiary's share of
2297 distributable net income. ~~[The amounts so allocated shall have]~~

2298 (b) An amount allocated in accordance with Subsection (3)(a) has the same character
2299 as for federal income tax purposes.

2300 ~~[(c)]~~ (4) (a) If ~~[the]~~ an estate or trust ~~[has no federal]~~ does not have distributable net
2301 income for the taxable year, the share of each beneficiary in the ~~[net]~~ amount determined under
2302 Subsection ~~[(1)]~~ (2)(a) shall be in proportion to ~~[his]~~ the beneficiary's share of the estate or trust
2303 income for ~~[such]~~ that taxable year, under state law or the terms of the governing instrument,
2304 that is required to be distributed currently and any other amounts of ~~[such]~~ that income
2305 distributed in ~~[such]~~ that taxable year. ~~[Any]~~

2306 (b) For purposes of this Subsection (4), any balance of ~~[such]~~ net income shall be
2307 allocated to the estate or trust.

2308 ~~[(2) The]~~ (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative
2309 Rulemaking Act, the commission may by rule establish ~~[such]~~ one or more other ~~[method or]~~
2310 methods of determining the ~~[respective]~~ shares of ~~[the beneficiaries]~~ a beneficiary and of ~~[the]~~
2311 an estate or trust in ~~[its]~~:

2312 (i) income derived from sources in this state~~;~~ and ~~[in the]~~

2313 (ii) modifications related ~~[thereto, as may be appropriate and equitable. The]~~ to
2314 income, gain, loss, or deduction.

2315 (b) A fiduciary may elect to use ~~[any other methods prescribed in]~~ a method allowed by
2316 this Subsection (5) only ~~[when]~~ if the allocation of ~~[such respective shares]~~ a share under ~~[this~~
2317 ~~section would result]~~ Subsection (3) or (4):

2318 (i) results in an inequity in the allocation ~~[which]; and~~

2319 (ii) the inequity described in Subsection (5)(b)(i) is substantial ~~[both];~~

2320 (A) in amount; and

2321 (B) in relation to the total amount of the modifications [~~referred to~~] described in

2322 Subsection [~~(+)~~] (2)(a).

2323 Section 44. Section **59-10-209.1** is amended to read:

2324 **59-10-209.1. Adjustments to unadjusted income.**

2325 (1) The commission shall allow an adjustment to [~~state taxable~~] unadjusted income of a
2326 resident or nonresident estate or trust if the resident or nonresident estate or trust would
2327 otherwise:

2328 (a) receive a double tax benefit under this chapter; or

2329 (b) suffer a double tax detriment under this chapter.

2330 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

2331 commission may make rules to allow for the adjustment to [~~state taxable~~] unadjusted income

2332 required by Subsection (1).

2333 Section 45. Section **59-10-210** is amended to read:

2334 **59-10-210. Fiduciary adjustments.**

2335 (1) A share of the fiduciary adjustments described in Subsection (2) shall be added to
2336 or subtracted from [~~federal taxable~~] unadjusted income:

2337 (a) of:

2338 (i) a resident or nonresident estate or trust; or

2339 (ii) a resident or nonresident beneficiary of a resident or nonresident estate or trust; and

2340 (b) as provided in this section.

2341 (2) For purposes of Subsection (1), the fiduciary adjustments are the following

2342 amounts:

2343 (a) the additions to and subtractions from [~~federal taxable~~] unadjusted income of a
2344 resident or nonresident estate or trust required by Section 59-10-202[~~, except for Subsection~~
2345 ~~59-10-202(2)(b)~~]; and

2346 (b) a tax credit claimed by a resident or nonresident estate or trust as allowed by:

2347 (i) Section 59-6-102;

2348 (ii) Part 10, Nonrefundable Tax Credit Act;

2349 (iii) Part 11, Refundable Tax Credit Act;

2350 (iv) Section 59-13-202;

2351 (v) Section 63-38f-413; or

2352 (vi) Section 63-38f-503.

2353 (3) (a) The respective shares of an estate or trust and its beneficiaries, including for the
2354 purpose of this allocation a nonresident beneficiary, in the state fiduciary adjustments, shall be
2355 allocated in proportion to their respective shares of federal distributable net income of the
2356 estate or trust.

2357 (b) If the estate or trust described in Subsection (3)(a) has no federal distributable net
2358 income for the taxable year, the share of each beneficiary in the fiduciary adjustments shall be
2359 allocated in proportion to that beneficiary's share of the estate or trust income for the taxable
2360 year that is, under state law or the governing instrument, required to be distributed currently
2361 plus any other amounts of that income distributed in that taxable year.

2362 (c) After making the allocations required by Subsections (3)(a) and (b), any balance of
2363 the fiduciary adjustments shall be allocated to the estate or trust.

2364 (4) (a) The commission shall allow a fiduciary to use a method for determining the
2365 allocation of the fiduciary adjustments described in Subsection (2) other than the method
2366 described in Subsection (3) if using the method described in Subsection (3) results in an
2367 inequity:

2368 (i) in allocating the fiduciary adjustments described in Subsection (2); and

2369 (ii) if the inequity is substantial:

2370 (A) in amount; and

2371 (B) in relation to the total amount of the fiduciary adjustments described in Subsection
2372 (2).

2373 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
2374 commission may make rules authorizing a fiduciary to use a method for determining the
2375 allocation of the fiduciary adjustments described in Subsection (2) other than the method
2376 described in Subsection (3) if using the method described in Subsection (3) results in an
2377 inequity:

2378 (i) in allocating the fiduciary adjustments described in Subsection (2); and

2379 (ii) if the inequity is substantial:

2380 (A) in amount; and

2381 (B) in relation to the total amount of the fiduciary adjustments described in Subsection

2382 (2).

2383 Section 46. Section **59-10-507** is amended to read:

2384 **59-10-507. Return by a pass-through entity.**

2385 (1) [~~For purposes of~~] As used in this section[, "taxable"]:

2386 (a) "Pass-through entity" is as defined in Section 59-10-1402.

2387 (b) "Taxable year" means a year or other time period that would be a taxable year of a
2388 [~~partnership if the partnership~~] pass-through entity if the pass-through entity were subject to
2389 taxation under this chapter.

2390 (2) A [~~partnership~~] pass-through entity having any income derived from sources in this
2391 state shall make a return for the taxable year as prescribed by the commission.

2392 (3) For purposes of Subsection (2), a [~~partnership's~~] pass-through entity's income
2393 derived from sources in this state shall be determined in accordance with [~~Section 59-10-303~~]
2394 the principles of Section 59-10-1405.

2395 Section 47. Section **59-10-1002.1**, which is renumbered from Section 59-10-1016 is
2396 renumbered and amended to read:

2397 [~~59-10-1016~~]. **59-10-1002.1. Removal of tax credit from tax return and**
2398 **prohibition on claiming or carrying forward a tax credit -- Conditions for removal and**
2399 **prohibition on claiming or carrying forward a tax credit -- Commission reporting**
2400 **requirements.**

2401 (1) As used in this section, "tax return" means a tax return filed in accordance with this
2402 chapter.

2403 (2) Beginning two taxable years after the requirements of Subsection (3) are met:

2404 (a) the commission shall remove a tax credit allowed under this part from each tax
2405 return on which the tax credit appears; and

2406 (b) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
2407 credit.

2408 (3) The commission shall remove a tax credit allowed under this part from a tax return
2409 and a claimant, estate, or trust filing a tax return may not claim or carry forward [a] the tax
2410 credit as provided in Subsection (2) if:

2411 (a) the total amount of the tax credit claimed or carried forward by all claimants,
2412 estates, or trusts filing tax returns is less than \$10,000 per year for three consecutive taxable

2413 years beginning on or after January 1, 2002; and

2414 (b) less than ten claimants, estates, and trusts per year for the three consecutive taxable
2415 years described in Subsection (3)(a), file a tax return claiming or carrying forward the tax
2416 credit.

2417 (4) The commission shall, on or before the November interim meeting of the year after
2418 the taxable year in which the requirements of Subsection (3) are met:

2419 (a) report to the Revenue and Taxation Interim Committee that in accordance with this
2420 section:

2421 (i) the commission is required to remove a tax credit from each tax return on which the
2422 tax credit appears; and

2423 (ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
2424 credit; and

2425 (b) notify each state agency required by statute to assist in the administration of the tax
2426 credit that in accordance with this section:

2427 (i) the commission is required to remove a tax credit from each tax return on which the
2428 tax credit appears; and

2429 (ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
2430 credit.

2431 Section 48. Section **59-10-1002.2**, which is renumbered from Section 59-10-1206.9 is
2432 renumbered and amended to read:

2433 ~~[59-10-1206.9].~~ **59-10-1002.2. Apportionment of tax credits.**

2434 (1) A nonresident individual or a part-year resident individual that claims a tax credit
2435 in accordance with Section [~~59-10-1206.1, 59-10-1206.2, or 59-10-1206.3~~] 59-10-1017,
2436 59-10-1018, 59-10-1019, 59-10-1021, or 59-10-1022, may only claim an apportioned amount
2437 of the tax credit equal to:

2438 [~~(+)~~] (a) for a nonresident individual, the product of:

2439 [~~(a)~~] (i) the state income tax percentage for the nonresident individual; and

2440 [~~(b)~~] (ii) the amount of the tax credit that the nonresident individual would have been
2441 allowed to claim but for the apportionment requirements of this section; or

2442 [~~(2)~~] (b) for a part-year resident individual, the product of:

2443 [~~(a)~~] (i) the state income tax percentage for the part-year resident individual; and

2444 ~~[(b)]~~ (ii) the amount of the tax credit that the part-year resident individual would have
2445 been allowed to claim but for the apportionment requirements of this section.

2446 (2) A nonresident estate or trust that claims a tax credit in accordance with Section
2447 59-10-1017, 59-10-1020, or 59-10-1022 may only claim an apportioned amount of the tax
2448 credit equal to the product of:

2449 (a) the state income tax percentage for the nonresident estate or trust; and

2450 (b) the amount of the tax credit that the nonresident estate or trust would have been
2451 allowed to claim but for the apportionment requirements of this section.

2452 Section 49. Section **59-10-1017**, which is renumbered from Section 59-10-1206.1 is
2453 renumbered and amended to read:

2454 ~~[59-10-1206.1].~~ **59-10-1017. Utah Educational Savings Plan tax credit.**

2455 (1) As used in this section:

2456 (a) "Account owner" is as defined in Section 53B-8a-102.

2457 ~~[(b)]~~ "Claimant" means a resident or nonresident individual that has state taxable
2458 ~~income under this part.]~~

2459 ~~[(c)]~~ (b) "Higher education costs" is as defined in Section 53B-8a-102.

2460 ~~[(d)]~~ (c) "Maximum amount of a qualified investment for the taxable year" means, for
2461 a taxable year:

2462 (i) for a claimant, estate, or trust that is an account owner, if that claimant, estate, or
2463 trust is ~~[a person]~~ other than husband and wife account owners who file a single return jointly,
2464 the maximum amount of a qualified investment:

2465 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

2466 (B) increased or decreased for that taxable year in accordance with Subsection
2467 53B-8a-106(1)(f); or

2468 (ii) for claimants who are husband and wife account owners who file a single return
2469 jointly, the maximum amount of a qualified investment:

2470 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

2471 (B) increased or decreased for that taxable year in accordance with Subsection
2472 53B-8a-106(1)(f).

2473 ~~[(e)]~~ (d) "Qualified investment" is as defined in Section 53B-8a-102.

2474 (2) ~~[For taxable years beginning on or after January 1, 2007, a]~~ Except as provided in

2475 Section 59-10-1002.2, a claimant, estate, or trust that is an account owner may claim a
 2476 nonrefundable tax credit equal to the product of:

2477 (a) the lesser of:

2478 (i) the amount of a qualified investment the claimant, estate, or trust:
 2479 (A) makes during the taxable year; and
 2480 (B) does not deduct;
 2481 (I) for a claimant, on the claimant's federal individual income tax return; or
 2482 (II) for an estate or trust, on the estate's or trust's federal income tax return; or
 2483 (ii) the maximum amount of a qualified investment for the taxable year if the amount
 2484 described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified investment
 2485 for the taxable year; and

2486 ~~[(b) (i) for the taxable year beginning on or after January 1, 2007, but beginning on or~~
 2487 ~~before December 31, 2007, 5.35%; or]~~

2488 ~~[(ii) for taxable years beginning on or after January 1, 2008, 5%.]~~

2489 (b) 5%.

2490 (3) A tax credit under this section may not be carried forward or carried back.

2491 Section 50. Section **59-10-1018**, which is renumbered from Section 59-10-1206.2 is
 2492 renumbered and amended to read:

2493 **[59-10-1206.2]. 59-10-1018. Definitions -- Nonrefundable taxpayer tax**
 2494 **credits.**

2495 (1) As used in this section:

2496 ~~[(a) "Claimant" means a resident or nonresident individual that has state taxable~~
 2497 ~~income under this part.]~~

2498 ~~[(b)]~~ (a) "Head of household filing status" means a head of household, as defined in
 2499 Section 2(b), Internal Revenue Code, who files a single federal individual income tax return for
 2500 the taxable year.

2501 ~~[(c)]~~ (b) "Joint filing status" means:

2502 (i) a husband and wife who file a single return jointly under this chapter for a taxable
 2503 year; or

2504 (ii) a surviving spouse, as defined in Section 2(a), Internal Revenue Code, who files a
 2505 single federal individual income tax return for the taxable year.

2506 [(d)] (c) "Single filing status" means:

2507 (i) a single individual who files a single federal individual income tax return for the
2508 taxable year; or

2509 (ii) a married individual who:

2510 (A) does not file a single federal individual income tax return jointly with that married
2511 individual's spouse for the taxable year; and

2512 (B) files a single federal individual income tax return for the taxable year.

2513 (2) Except as provided in Section [~~59-10-1206.9~~] 59-10-1002.2, and subject to
2514 Subsections (3) through (5), [~~for taxable years beginning on or after January 1, 2008,~~] a
2515 claimant may claim a nonrefundable tax credit against taxes otherwise due under this part equal
2516 to the sum of:

2517 (a) (i) for a claimant that deducts the standard deduction on the claimant's federal
2518 individual income tax return for the taxable year, 6% of the amount the claimant deducts as
2519 allowed as the standard deduction on the claimant's federal individual income tax return for
2520 that taxable year; or

2521 (ii) for a claimant that itemizes deductions on the claimant's federal individual income
2522 tax return for the taxable year, the product of:

2523 (A) the difference between:

2524 (I) the amount the claimant deducts as allowed as an itemized deduction on the
2525 claimant's federal individual income tax return for that taxable year; and

2526 (II) any amount of state or local income taxes the claimant deducts as allowed as an
2527 itemized deduction on the claimant's federal individual income tax return for that taxable year;
2528 and

2529 (B) 6%; and

2530 (b) [~~6%~~] the product of:

2531 (i) 75% of the total amount the claimant [~~would have been allowed to claim~~] deducts
2532 as allowed as a personal exemption deduction on the claimant's [~~state~~] federal individual
2533 income tax return [~~had the claimant filed an individual income tax return under Part 1,~~
2534 ~~Determination and Reporting of Tax Liability and Information, for the taxable year~~] for that
2535 taxable year; and

2536 (ii) 6%.

2537 (3) A claimant may not carry forward or carry back a tax credit under this section.

2538 (4) The tax credit allowed by Subsection (2) shall be reduced by \$.013 for each dollar
2539 by which a claimant's state taxable income exceeds:

2540 (a) for a claimant who has a single filing status, \$12,000;

2541 (b) for a claimant who has a head of household filing status, \$18,000; or

2542 (c) for a claimant who has a joint filing status, \$24,000.

2543 (5) (a) For taxable years beginning on or after January 1, 2009, the commission shall
2544 increase or decrease the following dollar amounts by a percentage equal to the percentage
2545 difference between the consumer price index for the preceding calendar year and the consumer
2546 price index for calendar year 2007:

2547 (i) the dollar amount listed in Subsection (4)(a); and

2548 (ii) the dollar amount listed in Subsection (4)(b).

2549 (b) After the commission increases or decreases the dollar amounts listed in Subsection
2550 (5)(a), the commission shall round those dollar amounts listed in Subsection (5)(a) to the
2551 nearest whole dollar.

2552 (c) After the commission rounds the dollar amounts as required by Subsection (5)(b),
2553 the commission shall increase or decrease the dollar amount listed in Subsection (4)(c) so that
2554 the dollar amount listed in Subsection (4)(c) is equal to the product of:

2555 (i) the dollar amount listed in Subsection (4)(a); and

2556 (ii) two.

2557 (d) For purposes of Subsection (5)(a), the commission shall calculate the consumer
2558 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

2559 Section 51. Section **59-10-1019**, which is renumbered from Section 59-10-1206.3 is
2560 renumbered and amended to read:

2561 ~~[59-10-1206.3].~~ **59-10-1019. Definitions -- Nonrefundable retirement tax**
2562 **credits.**

2563 (1) As used in this section:

2564 (a) "Eligible age 65 or older retiree" means a [~~resident or nonresident individual~~]
2565 claimant, regardless of whether that [~~individual~~] claimant is retired, who:

2566 (i) is 65 years of age or older; and

2567 (ii) was born on or before December 31, 1952[~~;~~ and].

- 2568 ~~[(iii) has state taxable income under this part.]~~
- 2569 (b) (i) "Eligible retirement income" means income received by an eligible under age 65
2570 retiree as a pension or annuity if that pension or annuity is:
- 2571 (A) paid to the eligible under age 65 retiree or the surviving spouse of an eligible under
2572 age 65 retiree; and
- 2573 (B) (I) paid from an annuity contract purchased by an employer under a plan that meets
2574 the requirements of Section 404(a)(2), Internal Revenue Code;
- 2575 (II) purchased by an employee under a plan that meets the requirements of Section 408,
2576 Internal Revenue Code; or
- 2577 (III) paid by:
- 2578 (Aa) the United States;
- 2579 (Bb) a state or a political subdivision of a state; or
- 2580 (Cc) the District of Columbia.
- 2581 (ii) "Eligible retirement income" does not include amounts received by the spouse of a
2582 living eligible under age 65 retiree because of the eligible under age 65 retiree's having been
2583 employed in a community property state.
- 2584 (c) "Eligible under age 65 retiree" means a ~~[resident or nonresident individual]~~
2585 claimant, regardless of whether that ~~[individual]~~ claimant is retired, who:
- 2586 (i) is younger than 65 years of age;
- 2587 (ii) was born on or before December 31, 1952; and
- 2588 (iii) has eligible retirement income for the taxable year for which a tax credit is claimed
2589 under this section~~[-and]~~.
- 2590 ~~[(iv) has state taxable income under this part.]~~
- 2591 (d) "Head of household filing status" is as defined in Section ~~[59-10-1206.2]~~
2592 59-10-1018.
- 2593 (e) "Joint filing status" is as defined in Section ~~[59-10-1206.2]~~ 59-10-1018.
- 2594 (f) "Married filing separately status" means a married individual who:
- 2595 (i) does not file a single federal individual income tax return jointly with that married
2596 individual's spouse for the taxable year; and
- 2597 (ii) files a single federal individual income tax return for the taxable year.
- 2598 (g) "Modified adjusted gross income" means the sum of an eligible age 65 or older

2599 retiree's or eligible under age 65 retiree's:

2600 (i) adjusted gross income for the taxable year for which a tax credit is claimed under
2601 this section; ~~and~~

2602 (ii) any interest income that is not included in adjusted gross income for the taxable
2603 year described in Subsection (1)(g)(i)~~[-]; and~~

2604 (iii) any addition to adjusted gross income required by Section 59-10-114 for the
2605 taxable year described in Subsection (1)(g)(i).

2606 (h) "Single filing status" means a single individual who files a single federal individual
2607 income tax return for the taxable year.

2608 (2) Except as provided in Section ~~[59-10-1206.9]~~ 59-10-1002.2 and subject to
2609 Subsections (3) through (6)~~[-; for taxable years beginning on or after January 1, 2008]:~~

2610 (a) each eligible age 65 or older retiree may claim a nonrefundable tax credit of \$450
2611 against taxes otherwise due under this part; or

2612 (b) each eligible under age 65 retiree may claim a nonrefundable tax credit against
2613 taxes otherwise due under this part in an amount equal to the lesser of:

2614 (i) \$288; or

2615 (ii) the product of:

2616 (A) the eligible under age 65 retiree's eligible retirement income for the taxable year for
2617 which the eligible under age 65 retiree claims a tax credit under this section; and

2618 (B) 6%.

2619 (3) A tax credit under this section may not be carried forward or carried back.

2620 (4) The sum of the tax credits allowed by Subsection (2)~~[(a)]~~ claimed on one return
2621 filed under this part shall be reduced by \$.025 for each dollar by which ~~[an eligible age 65 or~~
2622 ~~older retiree's]~~ modified adjusted gross income for purposes of the return exceeds:

2623 (a) for ~~[an eligible age 65 or older retiree who has]~~ a federal individual income tax
2624 return that is allowed a married filing separately status, \$16,000;

2625 (b) for ~~[an eligible age 65 or older retiree who has]~~ a federal individual income tax
2626 return that is allowed a single filing status, \$25,000; ~~[or]~~

2627 (c) for ~~[an eligible age 65 or older retiree who has]~~ a federal individual income tax
2628 return that is allowed a head of household filing status ~~[or a joint filing status]~~, \$32,000~~[-]; or~~

2629 (d) for a return under this chapter that is allowed a joint filing status, \$32,000.

2630 ~~[(5) The sum of the tax credits allowed by Subsection (2)(b) claimed on one return~~
2631 ~~filed under this part shall be reduced by \$.025 for each dollar by which an eligible under age 65~~
2632 ~~retiree's modified adjusted gross income exceeds:]~~

2633 ~~[(a) for an eligible under age 65 retiree who has a married filing separately status,~~
2634 ~~\$16,000;]~~

2635 ~~[(b) for an eligible under age 65 retiree who has a single filing status, \$25,000; or]~~

2636 ~~[(c) for an eligible under age 65 retiree who has a head of household filing status or a~~
2637 ~~joint filing status, \$32,000.]~~

2638 ~~[(6)] (5) For purposes of determining the ownership of items of retirement income~~
2639 ~~under this section, common law doctrine shall be applied in all cases even though some items~~
2640 ~~of retirement income may have originated from service or investments in a community property~~
2641 ~~state.~~

2642 Section 52. Section **59-10-1020** is enacted to read:

2643 **59-10-1020. Nonrefundable estate or trust tax credit.**

2644 (1) For taxable years beginning on or after January 1, 2008, an estate or trust may claim
2645 a nonrefundable tax credit against taxes otherwise due under Part 2, Trusts and Estates, equal
2646 to the product of:

2647 (a) the sum of:

2648 (i) the amount that a resident or nonresident estate or trust deducts under Section 163,
2649 Internal Revenue Code, for interest paid or accrued, as allowed on the resident or nonresident
2650 estate's or trust's federal income tax return for estates and trusts for the taxable year;

2651 (ii) the amount that a resident or nonresident estate or trust deducts under Section 164,
2652 Internal Revenue Code, for taxes paid or accrued other than for any amount paid or accrued for
2653 state or local income taxes for the taxable year, as allowed on the resident or nonresident
2654 estate's or trust's federal income tax return for estates and trusts for the taxable year;

2655 (iii) the amount that a resident or nonresident estate or trust other than a qualified
2656 nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a
2657 charitable contribution deduction, as allowed on the resident or nonresident estate's or trust's
2658 federal income tax return for estates and trusts for the taxable year;

2659 (iv) subject to Subsection (3), the amount that a resident or nonresident estate or trust
2660 deducts as an attorney, accountant, or return preparer fee, as allowed on the resident or

2661 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
2662 year; and

2663 (v) subject to Subsection (3), the amount that a resident or nonresident estate or trust
2664 deducts as an other deduction or miscellaneous itemized deduction, as allowed on the resident
2665 or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
2666 year; and

2667 (b) 6%.

2668 (2) An estate or trust may not carry forward or carry back a tax credit under this
2669 section.

2670 (3) The tax credit allowed by Subsection (1) shall be reduced by \$.013 for each dollar
2671 by which an estate's or trust's taxable income exceeds \$12,000.

2672 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

2673 (a) for purposes of Subsection (1)(a)(iv), the commission may make rules for
2674 determining what constitutes an attorney, accountant, or return preparer fee if that attorney,
2675 accountant, or return preparer fee is consistent with an attorney, accountant, or return preparer
2676 fee that may be deducted on a federal income tax return for estates and trusts; or

2677 (b) for purposes of Subsection (1)(a)(v), the commission may make rules for
2678 determining what constitutes an other deduction or miscellaneous itemized deduction if that
2679 other deduction or miscellaneous itemized deduction is consistent with an other deduction or
2680 miscellaneous itemized deduction that may be deducted on a federal income tax return for
2681 estates and trusts.

2682 Section 53. Section **59-10-1021** is enacted to read:

2683 **59-10-1021. Nonrefundable medical care savings account tax credit.**

2684 (1) As used in this section:

2685 (a) "Account administrator" is as defined in Section 31A-32a-102.

2686 (b) "Account holder" is as defined in Section 31A-32a-102.

2687 (c) "Eligible medical expense" is as defined in Section 31A-32a-102.

2688 (d) "Eligible spouse claimants" means claimants who are spouses if:

2689 (i) the claimants file a single return jointly as husband and wife;

2690 (ii) neither spouse is covered by:

2691 (A) health care insurance as defined in Section 31A-1-301; or

2692 (B) a self-funded plan that covers the other spouse; and
2693 (iii) each spouse is an account holder.
2694 (e) "Medical care savings account" is as defined in Section 31A-32a-102.
2695 (2) Except as provided in Section 59-10-1002.2 and subject to Subsections (3) and (4),
2696 for taxable years beginning on or after January 1, 2008, a claimant may claim a nonrefundable
2697 tax credit for:
2698 (a) a contribution:
2699 (i) made during the taxable year;
2700 (ii) made to a medical care savings account in accordance with Title 31A, Chapter 32a,
2701 Medical Care Savings Account Act;
2702 (iii) that is accepted by the account administrator; and
2703 (iv) that the claimant does not deduct on the claimant's federal individual income tax
2704 return under Section 220, Internal Revenue Code; and
2705 (b) interest on the contribution described in Subsection (2)(a).
2706 (3) (a) For eligible spouse claimants, a tax credit under this section is equal to the
2707 product of:
2708 (i) the greater of:
2709 (A) the sum of:
2710 (I) the amount contributed in accordance with Title 31A, Chapter 32a, Medical Care
2711 Savings Account Act, by or on behalf of the husband, not to exceed the amount described in
2712 Subsection 31A-32a-103(2)(a)(i); and
2713 (II) the amount contributed in accordance with Title 31A, Chapter 32a, Medical Care
2714 Savings Account Act, by or on behalf of the wife, not to exceed the amount described in
2715 Subsection 31A-32a-103(2)(a)(i); or
2716 (B) an amount equal to the sum of all eligible medical expenses paid by the eligible
2717 spouse claimants on behalf of:
2718 (I) the husband;
2719 (II) the wife; or
2720 (III) a dependent of the:
2721 (Aa) husband; or
2722 (Bb) wife; and

- 2723 (ii) 5%.
- 2724 (b) For a claimant other than eligible spouse claimants, a tax credit under this section is
2725 equal to the product of:
- 2726 (i) the greater of:
- 2727 (A) the amount contributed by or on behalf of the claimant, not to exceed the amount
2728 described in Subsection 31A-32a-103(2)(a)(i); or
- 2729 (B) an amount equal to the sum of all eligible medical expenses paid by the claimant
2730 on behalf of:
- 2731 (I) the claimant;
- 2732 (II) the claimant's spouse; or
- 2733 (III) a dependent of the claimant; and
- 2734 (ii) 5%.
- 2735 (4) A tax credit under this section may not be carried forward or carried back.
- 2736 Section 54. Section **59-10-1022** is enacted to read:
- 2737 **59-10-1022. Nonrefundable tax credit for capital gain transactions.**
- 2738 (1) As used in this section:
- 2739 (a) (i) "Capital gain transaction" means a transaction that results in a:
- 2740 (A) short-term capital gain; or
- 2741 (B) long-term capital gain.
- 2742 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
2743 the commission may by rule define the term "transaction."
- 2744 (b) "Commercial domicile" means the principal place from which the trade or business
2745 of a Utah small business corporation is directed or managed.
- 2746 (c) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.
- 2747 (d) "Qualifying stock" means stock that is:
- 2748 (i) (A) common; or
- 2749 (B) preferred;
- 2750 (ii) as defined by the commission by rule made in accordance with Title 63, Chapter
2751 46a, Utah Administrative Rulemaking Act, originally issued to:
- 2752 (A) a claimant, estate, or trust; or
- 2753 (B) a partnership if the claimant, estate, or trust that claims a tax credit under this

2754 section:

2755 (I) was a partner on the day on which the stock was issued; and

2756 (II) remains a partner until the last day of the taxable year for which the claimant,

2757 estate, or trust claims a tax credit under this section; and

2758 (iii) issued:

2759 (A) by a Utah small business corporation;

2760 (B) on or after January 1, 2008; and

2761 (C) for:

2762 (I) money; or

2763 (II) other property, except for stock or securities.

2764 (e) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

2765 (f) (i) "Utah small business corporation" means a corporation that:

2766 (A) except as provided in Subsection (1)(f)(ii), is a small business corporation as

2767 defined in Section 1244(c)(3), Internal Revenue Code;

2768 (B) except as provided in Subsection (1)(f)(iii), meets the requirements of Section

2769 1244(c)(1)(C), Internal Revenue Code; and

2770 (C) has its commercial domicile in this state.

2771 (ii) The dollar amount listed in Section 1244(c)(3)(A) is considered to be \$2,500,000.

2772 (iii) The phrase "the date the loss on such stock was sustained" in Sections

2773 1244(c)(1)(C) and 1244(c)(2), Internal Revenue Code, is considered to be "the last day of the

2774 taxable year for which the claimant, estate, or trust claims a tax credit under this section."

2775 (2) For taxable years beginning on or after January 1, 2008, a claimant, estate, or trust

2776 that meets the requirements of Subsection (3) may claim a nonrefundable tax credit equal to the

2777 product of:

2778 (a) the total amount of the claimant's, estate's, or trust's short-term capital gain or

2779 long-term capital gain on a capital gain transaction that occurs on or after January 1, 2008; and

2780 (b) 5%.

2781 (3) For purposes of Subsection (2), a claimant, estate, or trust may claim the

2782 nonrefundable tax credit allowed by Subsection (2) if:

2783 (a) 70% or more of the gross proceeds of the capital gain transaction are expended;

2784 (i) to purchase qualifying stock in a Utah small business corporation; and

2785 (ii) within a 12-month period after the day on which the capital gain transaction occurs;
2786 and

2787 (b) prior to the purchase of the qualifying stock described in Subsection (3)(a)(i), the
2788 claimant, estate, or trust did not have an ownership interest in the Utah small business
2789 corporation that issued the qualifying stock.

2790 (4) A claimant, estate, or trust may not carry forward or carry back a tax credit under
2791 this section.

2792 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
2793 commission may make rules:

2794 (a) defining the term "gross proceeds"; and

2795 (b) prescribing the circumstances under which a claimant, estate, or trust has an
2796 ownership interest in a Utah small business corporation.

2797 Section 55. Section **59-10-1106** is amended to read:

2798 **59-10-1106. Renewable energy tax credit.**

2799 (1) As used in this section:

2800 (a) "Active solar system" is as defined in Section 59-10-1014.

2801 (b) "Biomass system" is as defined in Section 59-10-1014.

2802 (c) "Business entity" is as defined in Section 59-10-1014.

2803 (d) "Commercial energy system" means any active solar, passive solar, geothermal
2804 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
2805 biomass system used to supply energy to a commercial unit or as a commercial enterprise.

2806 (e) "Commercial enterprise" means a business entity [~~whose purpose is to produce~~]
2807 that:

2808 (i) is a claimant, estate, or trust; and

2809 (ii) has the purpose of producing electrical, mechanical, or thermal energy for sale from
2810 a commercial energy system.

2811 (f) (i) "Commercial unit" means any building or structure that a business entity that is a
2812 claimant, estate, or trust uses to transact its business.

2813 (ii) Notwithstanding Subsection (1)(f)(i):

2814 (A) in the case of an active solar system used for agricultural water pumping or a wind
2815 system, each individual energy generating device shall be a commercial unit; and

2816 (B) if an energy system is the building or structure that a business entity that is a
2817 claimant, estate, or trust uses to transact its business, a commercial unit is the complete energy
2818 system itself.

2819 (g) "Direct-use geothermal system" is as defined in Section 59-10-1014.

2820 (h) "Geothermal electricity" is as defined in Section 59-10-1014.

2821 (i) "Geothermal heat-pump system" is as defined in Section 59-10-1014.

2822 (j) "Hydroenergy system" is as defined in Section 59-10-1014.

2823 ~~[(k) "Individual taxpayer" means any person who is a taxpayer as defined in Section~~
2824 ~~59-10-103 and an individual as defined in Section 59-10-103.]~~

2825 ~~[(†)]~~ (k) "Passive solar system" is as defined in Section 59-10-1014.

2826 ~~[(m)]~~ (l) "Utah Geological Survey" means the Utah Geological Survey established in
2827 Section 63-73-5.

2828 ~~[(n)]~~ (m) "Wind system" is as defined in Section 59-10-1014.

2829 (2) (a) (i) ~~[For taxable years beginning on or after January 1, 2007, a]~~ A business entity
2830 that is a claimant, estate, or trust that purchases or participates in the financing of a commercial
2831 energy system situated in Utah is entitled to a refundable tax credit as provided in this
2832 Subsection (2)(a) if the commercial energy system does not use wind, geothermal electricity, or
2833 biomass equipment capable of producing a total of 660 or more kilowatts of electricity and:

2834 (A) the commercial energy system supplies all or part of the energy required by
2835 commercial units owned or used by the business entity that is a claimant, estate, or trust; or

2836 (B) the business entity that is a claimant, estate, or trust sells all or part of the energy
2837 produced by the commercial energy system as a commercial enterprise.

2838 (ii) (A) A business entity that is a claimant, estate, or trust is entitled to a tax credit of
2839 up to 10% of the reasonable costs of any commercial energy system installed, including
2840 installation costs, against any tax due under this chapter for the taxable year in which the
2841 commercial energy system is completed and placed in service.

2842 (B) Notwithstanding Subsection (2)(a)(ii)(A), the total amount of the credit under this
2843 Subsection (2)(a) may not exceed \$50,000 per commercial unit.

2844 (C) The credit under this Subsection (2)(a) is allowed for any commercial energy
2845 system completed and placed in service on or after January 1, 2007.

2846 (iii) A business entity that is a claimant, estate, or trust that leases a commercial energy

2847 system installed on a commercial unit is eligible for the tax credit under this Subsection (2)(a)
2848 if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

2849 (iv) Only the principal recovery portion of the lease payments, which is the cost
2850 incurred by a business entity that is a claimant, estate, or trust in acquiring a commercial energy
2851 system, excluding interest charges and maintenance expenses, is eligible for the tax credit
2852 under this Subsection (2)(a).

2853 (v) A business entity that is a claimant, estate, or trust that leases a commercial energy
2854 system is eligible to use the tax credit under this Subsection (2)(a) for a period no greater than
2855 seven years from the initiation of the lease.

2856 (b) (i) [~~For taxable years beginning on or after January 1, 2007, a~~] A business entity
2857 that is a claimant, estate, or trust that owns a commercial energy system situated in Utah using
2858 wind, geothermal electricity, or biomass equipment capable of producing a total of 660 or more
2859 kilowatts of electricity is entitled to a refundable tax credit as provided in this section if:

2860 (A) the commercial energy system supplies all or part of the energy required by
2861 commercial units owned or used by the business entity that is a claimant, estate, or trust; or

2862 (B) the business entity that is a claimant, estate, or trust sells all or part of the energy
2863 produced by the commercial energy system as a commercial enterprise.

2864 (ii) A business entity that is a claimant, estate, or trust is entitled to a tax credit under
2865 this Subsection (2)(b) equal to the product of:

2866 (A) 0.35 cents; and

2867 (B) the kilowatt hours of electricity produced and either used or sold during the taxable
2868 year.

2869 (iii) The credit allowed by this Subsection (2)(b):

2870 (A) may be claimed for production occurring during a period of 48 months beginning
2871 with the month in which the commercial energy system is placed in service; and

2872 (B) may not be carried forward or back.

2873 (iv) A business entity that is a claimant, estate, or trust that leases a commercial energy
2874 system installed on a commercial unit is eligible for the tax credit under this section if the
2875 lessee can confirm that the lessor irrevocably elects not to claim the credit.

2876 (3) The tax credits provided for under this section are in addition to any tax credits
2877 provided under the laws or rules and regulations of the United States.

2878 (4) (a) The Utah Geological Survey may set standards for commercial energy systems
2879 claiming a tax credit under Subsection (2)(a) that cover the safety, reliability, efficiency,
2880 leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax
2881 credit use the state's renewable and nonrenewable energy resources in an appropriate and
2882 economic manner.

2883 (b) A tax credit may not be taken under this section until the Utah Geological Survey
2884 has certified that the commercial energy system has been completely installed and is a viable
2885 system for saving or production of energy from renewable resources.

2886 (5) The Utah Geological Survey and the commission may make rules in accordance
2887 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are necessary to
2888 implement this section.

2889 (6) (a) On or before October 1, 2012, and every five years thereafter, the Utah Tax
2890 Review Commission shall review each tax credit provided by this section and make
2891 recommendations to the Revenue and Taxation Interim Committee concerning whether the
2892 credit should be continued, modified, or repealed.

2893 (b) The Utah Tax Review Commission's report under Subsection (6)(a) shall include
2894 information concerning the cost of the credit, the purpose and effectiveness of the credit, and
2895 the state's benefit from the credit.

2896 Section 56. Section **59-10-1301** is enacted to read:

2897 **Part 13. Individual Income Tax Contribution Act**

2898 **59-10-1301. Title.**

2899 This part is known as the "Individual Income Tax Contribution Act."

2900 Section 57. Section **59-10-1302** is enacted to read:

2901 **59-10-1302. Definitions.**

2902 As used in this part, "contribution" means a contribution a resident or nonresident
2903 individual makes on an individual income tax return as allowed by this part.

2904 Section 58. Section **59-10-1303** is enacted to read:

2905 **59-10-1303. Contributions -- Amount -- Procedure for designating a contribution**
2906 **-- Joint return -- Contribution irrevocable.**

2907 (1) A resident or nonresident individual that makes a contribution under this part, other
2908 than Section 59-10-1311, may designate as the contribution any whole dollar amount of \$1 or

2909 more.

2910 (2) If a resident or nonresident individual designating a contribution under this part
 2911 other than Section 59-10-1311:

2912 (a) is owed an individual income tax refund for the taxable year, the amount of the
 2913 contribution under this part shall be deducted from the resident or nonresident individual's
 2914 individual income tax refund; or

2915 (b) is not owed an individual income tax refund for the taxable year, the resident or
 2916 nonresident individual may remit a contribution under this part with the resident or nonresident
 2917 individual's individual income tax return.

2918 (3) If a husband and wife file a single individual income tax return jointly, a
 2919 contribution under this part, other than Section 59-10-1311, shall be a joint contribution.

2920 (4) A contribution under this part is irrevocable for the taxable year for which the
 2921 resident or nonresident individual makes the contribution.

2922 Section 59. Section **59-10-1304**, which is renumbered from Section 59-10-551 is
 2923 renumbered and amended to read:

2924 **[59-10-551]. 59-10-1304. Removal of designation and prohibitions on**
 2925 **collection for certain contributions on income tax form -- Conditions for removal and**
 2926 **prohibitions on collection -- Commission reporting requirements.**

2927 (1) (a) If a contribution or combination of contributions described in Subsection (1)(b)
 2928 generate less than \$30,000 per year for three consecutive years, the commission shall remove
 2929 the designation for the contribution from the individual income tax return and may not collect
 2930 the contribution from a resident or nonresident individual beginning two taxable years after the
 2931 three-year period for which the contribution generates less than \$30,000 per year.

2932 (b) The following contributions apply to Subsection (1)(a):

2933 (i) the contribution provided for in Section [~~59-10-530~~] 59-10-1305;

2934 (ii) the contribution provided for in Section [~~59-10-530.5~~] 59-10-1306;

2935 (iii) the sum of the contributions provided for in Subsection [~~59-10-549~~]
 2936 59-10-1307(1)(a);

2937 (iv) the contribution provided for in Subsection [~~59-10-549~~] 59-10-1307(1)(b);

2938 (v) the contribution provided for in Section [~~59-10-550~~] 59-10-1308;

2939 (vi) the contribution provided for in Section [~~59-10-550.1~~] 59-10-1309; or

2940 (vii) the contribution provided for in Section ~~[59-10-550.2]~~ 59-10-1310.

2941 (2) If the commission removes the designation for a contribution under Subsection (1),
2942 the commission shall report to the Revenue and Taxation Interim Committee that the
2943 commission removed the designation on or before the November interim meeting of the year in
2944 which the commission determines to remove the designation.

2945 Section 60. Section **59-10-1305**, which is renumbered from Section 59-10-530 is
2946 renumbered and amended to read:

2947 ~~[59-10-530]~~. **59-10-1305. Nongame wildlife contribution -- Credit to**
2948 **Wildlife Resources Account.**

2949 ~~[(1) The Legislature hereby declares that wildlife species which are endangered,~~
2950 ~~threatened with extinction, not commonly pursued, killed, or consumed either for sport or~~
2951 ~~profit, and are not nuisance predators presently being brought under control by the state~~
2952 ~~referred to herein as "nongame wildlife," have need of special protection and that it is in the~~
2953 ~~public interest to preserve, protect, perpetuate, and enhance nongame wildlife resources of this~~
2954 ~~state through preservation of a satisfactory environment and an ecological balance. The~~
2955 ~~Legislature specifically recognizes that such nongame wildlife includes protected wildlife,~~
2956 ~~endangered and threatened wildlife, aquatic wildlife, specialized habitat wildlife, both~~
2957 ~~terrestrial and aquatic types, and mollusks, crustaceans, and other invertebrates under the~~
2958 ~~jurisdiction of the Division of Wildlife Resources. This section is enacted to provide a means~~
2959 ~~by which such protection may be financially aided through a voluntary check-off designation~~
2960 ~~on state income tax return forms. The intent of the Legislature is that this program of the~~
2961 ~~income tax check-off is supplemental to any other funding and in no way is intended to take the~~
2962 ~~place of the funding that would otherwise be appropriated for this purpose.]~~

2963 (1) As used in this section, "nongame wildlife" means wildlife species that are:

2964 (a) (i) protected;

2965 (ii) endangered; or

2966 (iii) threatened with extinction;

2967 (b) under the jurisdiction of the Division of Wildlife Resources, including:

2968 (i) aquatic wildlife;

2969 (ii) a crustacean;

2970 (iii) an invertebrate;

2971 (iv) a mollusk; or
 2972 (v) specialized habitat wildlife, including an aquatic or terrestrial type of specialized
 2973 habitat wildlife;

2974 (c) not commonly pursued, killed, or consumed for sport or profit; and

2975 (d) not nuisance predators presently being brought under control by the state.

2976 (2) Except as provided in Section [~~59-10-551, each individual taxpayer required to file~~
 2977 ~~a return pursuant to Section 59-10-502]~~ 59-10-1304, a resident or nonresident individual that
 2978 files an individual income tax return under this chapter may designate on the resident or
 2979 nonresident individual's individual income tax return a contribution [of \$1, \$5, \$10, or another
 2980 amount not less than \$1, or no contribution, to the state Nongame Wildlife Program] as
 2981 provided in this part to preserve, protect, perpetuate, and enhance nongame wildlife resources
 2982 of the state through preservation of a satisfactory environment and an ecological balance. [If
 2983 the return is a joint return, any amount designated as a contribution to this program is to be
 2984 deducted from the individual's state tax refund and shall be a joint contribution. This option,
 2985 once exercised, is irrevocable during the tax year in which it was effective.]

2986 [~~(3) The commission may promulgate rules to effectuate the provisions of this section.]~~

2987 [~~(4)~~] (3) The commission shall:

2988 (a) determine annually the total amount of contributions designated [pursuant to] in
 2989 accordance with this section; and [shall report such amount to the state treasurer who shall
 2990 credit such amount]

2991 (b) credit the amount described in Subsection (3)(a) to the Wildlife Resources Account
 2992 [as provided for in Section 23-14-14] in accordance with Section 23-14-13.

2993 [~~(5) This section applies to calendar-year taxpayers beginning January 1, 1980, and to~~
 2994 ~~fiscal-year taxpayers for any part of the taxable year accruing after December 31, 1979, and to~~
 2995 ~~all taxable years thereafter.]~~

2996 Section 61. Section **59-10-1306**, which is renumbered from Section 59-10-530.5 is
 2997 renumbered and amended to read:

2998 **[~~59-10-530.5~~]. 59-10-1306. Homeless contribution -- Credit to Pamela**
 2999 **Atkinson Homeless Trust Account.**

3000 (1) [~~(a)~~] Except as provided in Section [~~59-10-551, each taxpayer required to file a~~
 3001 ~~return pursuant to Section 59-10-502 may designate on the return a contribution of \$2, \$5, \$10,~~

3002 ~~or another amount not less than \$2, or no contribution,]~~ 59-10-1304, a resident or nonresident
3003 individual that files an individual income tax return under this chapter may designate on the
3004 resident or nonresident individual's individual income tax return a contribution to the Pamela
3005 Atkinson Homeless Trust Account as provided in this part.

3006 ~~[(b) Any amount designated as a contribution to this program is to be deducted from~~
3007 ~~the individual's state tax refund and, if a joint return, shall be a joint contribution.]~~

3008 ~~[(c) This option, once exercised, is irrevocable during the tax year in which it was~~
3009 ~~effective.]~~

3010 ~~[(d) If no refund is due, the taxpayer may remit the contribution with the return.]~~

3011 ~~[(2) The commission may make rules to implement this section.]~~

3012 ~~[(3)]~~ (2) The commission shall:

3013 (a) determine annually the total amount of contributions designated [~~pursuant to~~] in
3014 accordance with this section; and [~~shall report such amount to the state treasurer who shall~~
3015 ~~credit such amount]~~

3016 (b) credit the amount described in Subsection (2)(a) to the Pamela Atkinson Homeless
3017 Trust Account [as provided for in] created by Section 9-4-803.

3018 ~~[(4) This section applies to calendar-year taxpayers beginning January 1, 1988, and to~~
3019 ~~fiscal-year taxpayers for any part of the taxable year accruing after December 31, 1988, and to~~
3020 ~~all taxable years thereafter.]~~

3021 Section 62. Section **59-10-1307**, which is renumbered from Section 59-10-549 is
3022 renumbered and amended to read:

3023 ~~[59-10-549].~~ **59-10-1307. Contributions for education.**

3024 (1) Except as provided in Section [~~59-10-551, a taxpayer that files a return pursuant to~~
3025 ~~Section 59-10-502]~~ 59-10-1304, a resident or nonresident individual that files an individual
3026 income tax return under this chapter may designate on the resident or nonresident individual's
3027 individual income tax return a contribution as provided in this [~~section]~~ part to:

3028 (a) (i) the foundation of any school district if that foundation is exempt from federal
3029 income taxation under Section 501(c)(3), Internal Revenue Code; or

3030 (ii) a school district described in Title 53A, Chapter 2, School Districts, if the school
3031 district has not established a foundation; or

3032 (b) a college campus of the Utah College of Applied Technology listed in Section

3033 53B-2a-105[~~;~~or].

3034 [~~(c) for taxable years beginning on or after January 1, 2004, but beginning on or before~~
3035 ~~December 31, 2006, the Uniform School Fund.]~~

3036 [~~(2) (a) A taxpayer may designate as a contribution under this section any whole dollar~~
3037 ~~amount of \$1 or more.]~~

3038 [~~(b) (i) If the taxpayer is owed an individual income tax refund for the taxable year, the~~
3039 ~~amount of a contribution under this section shall be deducted from the taxpayer's individual~~
3040 ~~income tax refund.]~~

3041 [~~(ii) If the taxpayer is not owed an individual income tax refund for the taxable year,~~
3042 ~~the taxpayer may remit a contribution under this section with the taxpayer's individual income~~
3043 ~~tax return.]~~

3044 [~~(c) If a taxpayer files a joint return, the contribution under this section shall be a joint~~
3045 ~~contribution.]~~

3046 [~~(d) A contribution under this section is irrevocable during the taxable year for which~~
3047 ~~the taxpayer makes the contribution.]~~

3048 [~~(3)~~] (2) If a [taxpayer] resident or nonresident individual designates an amount as a
3049 contribution under:

3050 (a) Subsection (1)(a)(i), but does not designate a particular school district foundation to
3051 receive the contribution, the contribution shall be made to the Utah State Office of Education to
3052 be distributed to one or more associations of foundations:

3053 (i) if those foundations that are members of the association are established in
3054 accordance with Section 53A-4-205; and

3055 (ii) as determined by the Utah State Office of Education; or

3056 (b) Subsection (1)(a)(ii), but does not designate a particular school district to receive
3057 the contribution, the contribution shall be made to the Utah State Office of Education.

3058 [~~(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
3059 ~~the commission may make rules to implement this section.]~~

3060 [~~(5)~~] (3) The commission shall:

3061 (a) determine annually the total amount of contributions designated to each entity
3062 described in Subsection (1) in accordance with this section; and

3063 [~~(b) report this amount to the state treasurer.]~~

3064 ~~[(6) The state treasurer shall credit any contributions reported to the state treasurer in~~
 3065 ~~accordance with Subsection (5):]~~

3066 ~~[(a)] (b) subject to Subsection [(3)] (2), [if a taxpayer designates a contribution to an~~
 3067 ~~entity listed in Subsection (1)(a) or (b) in accordance with this section, to the entity that is~~
 3068 ~~designated by the taxpayer; or] credit the amounts described in Subsection (1) to the entities.~~

3069 ~~[(b) if a taxpayer designates a contribution to the Uniform School Fund under~~
 3070 ~~Subsection (1)(c) in accordance with this section, to the Uniform School Fund.]~~

3071 Section 63. Section **59-10-1308**, which is renumbered from Section 59-10-550 is
 3072 renumbered and amended to read:

3073 **[~~59-10-550~~]. 59-10-1308. Children's organ transplants contribution --**
 3074 **Credit to Kurt Oscarson Children's Organ Transplant Trust Account.**

3075 (1) Except as provided in Section [~~59-10-551~~, a taxpayer who files a return pursuant to
 3076 ~~Section 59-10-502] 59-10-1304, a resident or nonresident individual that files an individual
 3077 income tax return under this chapter may designate on the resident or nonresident individual's
 3078 individual income tax return a contribution [of the amount of his refund, if any, or any other
 3079 amount in excess of \$1 to the trust account created in] to the Kurt Oscarson Children's Organ
 3080 Transplant Trust Account created by Section 26-18a-4.~~

3081 ~~[(2) Any amount designated as a contribution to this trust account shall be deducted~~
 3082 ~~from the individual's state tax refund and, if a joint return, is a joint contribution. This option,~~
 3083 ~~once exercised, is irrevocable during the tax year in which it was effective. If no refund is due,~~
 3084 ~~the taxpayer may remit any contribution over \$1 with the return.]~~

3085 ~~[(3) The commission may make rules to implement this section:]~~

3086 ~~[(4)] (2) The commission shall:~~

3087 (a) determine annually the total amount of contributions designated [~~under~~] in
 3088 accordance with this section; and [shall report the amount to the state treasurer, who shall]

3089 (b) credit the amount described in Subsection (2)(a) to the [restricted account] Kurt
 3090 Oscarson Children's Organ Transplant Trust Account created [~~in~~] by Section 26-18a-4.

3091 ~~[(5) This section applies to calendar-year taxpayers beginning January 1, 1992, and to~~
 3092 ~~fiscal-year taxpayers for any part of the taxable year accruing after December 31, 1992, and to~~
 3093 ~~each subsequent taxable year.]~~

3094 Section 64. Section **59-10-1309**, which is renumbered from Section 59-10-550.1 is

3095 renumbered and amended to read:

3096 ~~[59-10-550.1].~~ **59-10-1309. Contribution to Wolf Depredation and**
3097 **Management Restricted Account.**

3098 (1) Except as provided in Section ~~[59-10-551, for taxable years beginning on or after~~
3099 ~~January 1, 2004]~~ 59-10-1304, a resident or nonresident individual that files an individual
3100 income tax return under this chapter may designate on the resident or nonresident individual's
3101 individual income tax return a contribution as provided in this section to be:

3102 (a) deposited into the Wolf Depredation and Management Restricted Account created
3103 by Section 23-14-14.1; and

3104 (b) used for the purposes described in Section 23-14-14.1.

3105 ~~[(2)(a) A resident or nonresident individual may designate as a contribution under this~~
3106 ~~section any whole dollar amount of \$1 or more.]~~

3107 ~~[(b) If a resident or nonresident individual designating a contribution under this~~
3108 ~~section:]~~

3109 ~~[(i) is owed an individual income tax refund for the taxable year, the amount of the~~
3110 ~~contribution under this section shall be deducted from the resident or nonresident individual's~~
3111 ~~individual income tax refund; or]~~

3112 ~~[(ii) is not owed an individual income tax refund for the taxable year, the resident or~~
3113 ~~nonresident individual may remit a contribution under this section with the resident or~~
3114 ~~nonresident individual's individual income tax return.]~~

3115 ~~[(c) If a husband and wife file a single individual income tax return jointly, a~~
3116 ~~contribution under this section shall be a joint contribution.]~~

3117 ~~[(d) A contribution under this section is irrevocable for the taxable year for which the~~
3118 ~~resident or nonresident individual makes the contribution.]~~

3119 ~~[(3)]~~ (2) The commission shall:

3120 (a) determine annually the total amount of contributions designated in accordance with
3121 this section; and

3122 (b) credit the amount described in Subsection ~~[(3)]~~ (2)(a) to the Wolf Depredation and
3123 Management Restricted Account created by Section 23-14-14.1.

3124 Section 65. Section **59-10-1310**, which is renumbered from Section 59-10-550.2 is
3125 renumbered and amended to read:

3126 ~~[59-10-550.2].~~ **59-10-1310.** Contribution to Cat and Dog Community Spay
3127 **and Neuter Program Restricted Account.**

3128 (1) Except as provided in Section ~~[59-10-551, for taxable years beginning on or after~~
3129 ~~January 1, 2006]~~ 59-10-1304, a resident or nonresident individual that files an individual
3130 income tax return under this chapter may designate on the resident or nonresident individual's
3131 individual income tax return a contribution as provided in this section to be:

3132 (a) deposited into the Cat and Dog Community Spay and Neuter Program Restricted
3133 Account created by Section 26-48-102; and

3134 (b) distributed by the Department of Health as provided in Section 26-48-102.

3135 ~~[(2) (a) A resident or nonresident individual may designate as a contribution under this~~
3136 ~~section any whole dollar amount of \$1 or more.]~~

3137 ~~[(b) If a resident or nonresident individual designating a contribution under this~~
3138 ~~section:]~~

3139 ~~[(i) is owed an individual income tax refund for the taxable year, the amount of the~~
3140 ~~contribution under this section shall be deducted from the resident or nonresident individual's~~
3141 ~~individual income tax refund; or]~~

3142 ~~[(ii) is not owed an individual income tax refund for the taxable year, the resident or~~
3143 ~~nonresident individual may remit a contribution under this section with the resident or~~
3144 ~~nonresident individual's individual income tax return.]~~

3145 ~~[(c) If a husband and wife file a single individual income tax return jointly, a~~
3146 ~~contribution under this section shall be a joint contribution.]~~

3147 ~~[(d) A contribution under this section is irrevocable for the taxable year for which the~~
3148 ~~resident or nonresident individual makes the contribution.]~~

3149 ~~[(3)]~~ (2) The commission shall:

3150 (a) determine annually the total amount of contributions designated in accordance with
3151 this section; and

3152 (b) credit the amount described in Subsection ~~[(3)]~~ (2)(a) to the Cat and Dog
3153 Community Spay and Neuter Program Restricted Account created by Section 26-48-102.

3154 Section 66. Section **59-10-1311**, which is renumbered from Section 59-10-547 is
3155 renumbered and amended to read:

3156 ~~[59-10-547].~~ **59-10-1311.** Election Campaign Fund contribution --

3157 **Transfer from General Fund -- Form and procedure.**

3158 ~~[(1)(a) Every individual other than a nonresident alien whose income tax liability, less~~
3159 ~~any credit allowed by this chapter, for any taxable year is \$2 or more may designate that \$2 be~~
3160 ~~paid into the Election Campaign Fund established under Section 59-10-548.]~~

3161 (1) (a) A resident or nonresident individual, other than a nonresident alien, may
3162 designate on the resident or nonresident individual's individual income tax return a contribution
3163 of \$2 to the Election Campaign Fund created by Section 59-10-1312, if the resident or
3164 nonresident individual:

3165 (i) has a liability under this chapter for a taxable year of \$2 or more; and

3166 (ii) files a return under this chapter.

3167 (b) The commission shall transfer \$2 from the General Fund to the Election Campaign
3168 Fund for each ~~[campaign designation]~~ contribution made on an individual income tax return
3169 under this Subsection (1).

3170 (c) The transfer described in Subsection (1)(b) shall ~~[come]~~ be made from revenue
3171 generated from ~~[the]~~ state sales and use tax revenues collected in accordance with Chapter 12,
3172 Sales and Use Tax Act.

3173 (2) (a) A ~~[designation]~~ contribution under Subsection (1) may be made with respect to
3174 any taxable year at the time ~~[of filing the]~~ a resident or nonresident individual files a return for
3175 that taxable year.

3176 (b) The ~~[form for the return shall be prepared by the]~~ commission ~~[to include provision~~
3177 ~~for a campaign]~~ shall include the contribution [designation] allowed by this section:

3178 (i) on a return under this chapter; and

3179 (ii) for any political party as defined by Section 20A-1-102 that has qualified as a
3180 political party in the first six months of the calendar year for which the return is prepared.

3181 ~~[(c) The political parties shall be placed on the form in alphabetical order.]~~

3182 ~~[(d) Any individual who chooses to designate funds to the Election Campaign Fund~~
3183 ~~shall place a check mark opposite the name of the political party on the form provided by the~~
3184 ~~commission.]~~

3185 ~~[(e) The form shall also contain a box in which the taxpayer can]~~

3186 (c) The commission shall place a political party described in Subsection (2)(b) on a
3187 return described in Subsection (2)(b) in alphabetical order.

3188 (d) The commission shall include on a return described in Subsection (2)(b):
 3189 (i) the option for a resident or nonresident individual to indicate that no contribution is
 3190 to be made to any political party[-]; and
 3191 (ii) a statement that a contribution a resident or nonresident individual, other than a
 3192 nonresident alien, makes under this section may not:
 3193 (A) increase the resident or nonresident individual's tax liability under this chapter; or
 3194 (B) reduce the resident or nonresident individual's refund under this chapter.

3195 Section 67. Section **59-10-1312**, which is renumbered from Section 59-10-548 is
 3196 renumbered and amended to read:

3197 **[59-10-548]. 59-10-1312. Election Campaign Fund -- Creation -- Funding**
 3198 **for account -- Disbursement and distribution -- State treasurer requirement to provide a**
 3199 **list of contributions designated to each political party.**

3200 (1) (a) As used in this section, "fund" means the Election Campaign Fund created by
 3201 this section.

3202 ~~[(+)(a)]~~ (b) There is [established] created an agency fund [to be] known as the
 3203 "Election Campaign Fund."

3204 ~~[(b)]~~ (c) The fund shall consist of all amounts deposited to [it as provided in] the fund
 3205 in accordance with Section [59-10-547] 59-10-1311.

3206 (2) On or before four months after the due date [of the returns] for filing a return
 3207 required by this chapter in which [designations of payment to the fund have been made] a
 3208 contribution is made in accordance with Section 59-10-1311, the state treasurer shall:

3209 (a) disburse that portion of the amounts deposited in the fund since the last
 3210 disbursement;

3211 (i) that [were] are designated for a political party; and

3212 (ii) to the political party to which [they were] the amounts are designated; and

3213 (b) provide to the political party described in Subsection (2)(a)(ii) a list disclosing, for
 3214 each county, the total amount designated by [taxpayers] resident or nonresident individuals,
 3215 other than nonresident aliens, in that county.

3216 Section 68. Section **59-10-1401** is enacted to read:

3217 **Part 14. Income Tax Treatment of Pass-Through Entities Act**

3218 **59-10-1401. Title.**

3219 This part is known as the "Income Tax Treatment of Pass-Through Entities Act."

3220 Section 69. Section **59-10-1402** is enacted to read:

3221 **59-10-1402. Definitions.**

3222 As used in this part:

3223 (1) "Limited liability company" includes a foreign limited liability company.

3224 (2) (a) "Pass-through entity" means a business entity that is:

3225 (i) a general partnership;

3226 (ii) a limited liability company;

3227 (iii) a limited liability partnership;

3228 (iv) a limited partnership; or

3229 (v) a business entity similar to Subsections (2)(a)(i) through (iv):

3230 (A) with respect to which the business entity's income or losses are divided among and

3231 passed through to taxpayers; and

3232 (B) as defined by the commission by rule made in accordance with Title 63, Chapter

3233 46a, Utah Administrative Rulemaking Act.

3234 (b) "Pass-through entity" does not include a trust.

3235 (3) "Taxpayer" means:

3236 (a) for a general partnership, a partner;

3237 (b) for a limited liability company, a member;

3238 (c) for a limited liability partnership, a partner;

3239 (d) for a limited partnership, a partner; or

3240 (e) for a business entity described in Subsection (2)(a)(v), a member, partner,

3241 shareholder, or other title designated by the commission by rule made in accordance with Title

3242 63, Chapter 46a, Utah Administrative Rulemaking Act.

3243 Section 70. Section **59-10-1403**, which is renumbered from Section 59-10-301 is

3244 renumbered and amended to read:

3245 **[59-10-301]. 59-10-1403. Pass-through entities -- Income tax treatment --**

3246 **Returns -- Limited liability companies.**

3247 [A partnership] (1) Subject to Subsection (3), a pass-through entity is not subject to

3248 [the] a tax imposed by this chapter. [Persons carrying on business as partners are liable for the

3249 tax imposed by this chapter only in their separate or individual capacities.]

3250 (2) The income or losses of a pass-through entity shall be divided among and passed
 3251 through to taxpayers.

3252 (3) A pass-through entity is subject to the return filing requirements of Section
 3253 59-10-507.

3254 (4) A pass-through entity that is a limited liability company that transacts business in
 3255 the state shall be classified for purposes of taxation under this title in the same manner as the
 3256 limited liability company is classified for federal income tax purposes.

3257 Section 71. Section **59-10-1404**, which is renumbered from Section 59-10-302 is
 3258 renumbered and amended to read:

3259 **[59-10-302]. 59-10-1404. Character of an item of income, gain, loss, or**
 3260 **deduction.**

3261 (1) Each item of [partnership] income, gain, loss, or deduction of a pass-through entity
 3262 has the same character for a [partner] taxpayer under this chapter as [it] that item of income,
 3263 gain, loss, or deduction has for federal income tax purposes. [When an item]

3264 (2) If an item of income, gain, loss, or deduction described in Subsection (1) is not
 3265 characterized for federal income tax purposes, [it] that item of income, gain, loss, or deduction
 3266 has the same character for a [partner] taxpayer as if the item of income, gain, loss, or deduction
 3267 is:

3268 (a) realized directly from the source from which the item of income, gain, loss, or
 3269 deduction is realized by the [partnership,] pass-through entity; or

3270 (b) incurred in the same manner as incurred by the [partnership] pass-through entity.

3271 ~~(2)~~ (3) In determining state taxable income of a resident [partner any modification]
 3272 taxpayer, any addition or subtraction described in Section 59-10-114 [which] that relates to an
 3273 item of [partnership] income, gain, loss, or deduction of a pass-through entity shall be made in
 3274 accordance with the [partner's] taxpayer's distributive share[-, for federal income tax purposes,];

3275 (a) of the [items] item to which the [modification] addition or subtraction relates[-

3276 Where a partner's]; and

3277 (b) for federal income tax purposes.

3278 (4) If a taxpayer's distributive share of [any such item] an item of income, gain, loss, or
 3279 deduction described in Subsection (3) is not required to be taken into account separately for
 3280 federal income tax purposes, the [partner's] taxpayer's distributive share of [such] that item of

3281 income, gain, loss, or deduction shall be determined in accordance with [his] that taxpayer's
 3282 distributive share[-, for federal income tax purposes,];

3283 (a) of [partnership] income or loss relating to the pass-through entity generally; and
 3284 (b) for federal income tax purposes.

3285 Section 72. Section **59-10-1405**, which is renumbered from Section 59-10-303 is
 3286 renumbered and amended to read:

3287 ~~[59-10-303].~~ **59-10-1405. Nonresident taxpayer's share of income, gain,**
 3288 **loss, or deduction of a pass-through entity.**

3289 (1) [~~In determining the~~] Subject to Subsection (2), the adjusted gross income of a
 3290 nonresident [partner of any partnership, there shall be included only that part] taxpayer shall be
 3291 adjusted by only that portion of the taxpayer's distributive share of an item of income, gain,
 3292 loss, or deduction of a pass-through entity derived from or connected with sources in this state
 3293 [~~of the partner's distributive share of items of partnership income, gain, loss, and deduction~~
 3294 ~~entering into the partner's adjusted gross income, as such part is determined under rules~~
 3295 ~~prescribed by the commission in accordance with the general rules in Section 59-10-116].~~

3296 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 3297 commission may make rules for determining the adjustment required by Subsection (1) if those
 3298 rules are consistent with the principles of Section 59-10-116.

3299 [~~(2)~~] (3) In determining the [sources] source of a nonresident [partner's] taxpayer's
 3300 income, [no effect shall be given to a provision in the partnership agreement which] the
 3301 following provisions in a pass-through entity agreement may not be considered:

3302 (a) a provision that:

3303 [~~(a)~~] (i) characterizes [payments] a payment to the [partner] taxpayer as being for
 3304 [services or for];

3305 (A) a service; or

3306 (B) the use of capital[-, or];

3307 (b) except as provided in Subsection (5), a provision that allocates to the [partner]
 3308 taxpayer, as income or gain from [sources] a source outside this state, a greater proportion of
 3309 the [partner's] taxpayer's distributive share of [partnership] income or gain of the pass-through
 3310 entity than the ratio of [partnership] income or gain of the pass-through entity from sources
 3311 outside this state to [partnership] income or gain of the pass-through entity from all sources[-;

3312 ~~except as authorized in Subsection (4)];~~

3313 ~~[(b)]~~ (c) except as provided in Subsection (5) a provision that allocates to the [partner]
3314 taxpayer a greater proportion of [a partnership] an item of loss or deduction of the pass-through
3315 entity connected with sources in this state than the [partner's] taxpayer's proportionate share[;
3316 for federal income tax purposes;] of [partnership] loss or deduction generally[~~;~~ except as
3317 authorized in Subsection (4).];

3318 (i) relating to the pass-through entity; and

3319 (ii) for federal income tax purposes.

3320 ~~[(3)]~~ (4) Any [modification] addition or subtraction described in Section 59-10-114
3321 that relates to an item of [partnership] income, gain, loss, or deduction[;] of a pass-through
3322 entity shall be made in accordance with the [partner's] taxpayer's distributive share [for federal
3323 income tax purposes of the item to which the modification relates, but limited to the portion of
3324 such item derived from or connected with sources in this state.];

3325 (a) of the portion of the item of income, gain, loss, or deduction required to be added or
3326 subtracted under Section 59-10-114 that is derived from or connected with sources in the state;
3327 and

3328 (b) for federal income tax purposes.

3329 ~~[(4) The]~~ (5) (a) Subject to Subsection (5)(b), the commission may[~~;~~ on application,]
3330 by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
3331 authorize the use of [such other] one or more methods [of], other than a method described in
3332 Subsections (1) through (4), for determining:

3333 (i) a nonresident [partner's] taxpayer's portion of [partnership items] an item of income,
3334 gain, loss, or deduction of a pass-through entity derived from or connected with sources in
3335 [this] the state[~~;~~ and the modifications related thereto, as may be appropriate and equitable, on
3336 such terms and conditions as the commission may require.]; and

3337 (ii) the portion of an item of income, gain, loss, or deduction required to be added or
3338 subtracted under Section 59-10-114 that is derived from or connected with sources in the state.

3339 (b) For purposes of Subsection (5)(a), the commission may authorize the use of one or
3340 more methods, other than a method described in Subsections (1) through (4), if:

3341 (i) the commission finds that the use of the method is appropriate and equitable; and

3342 (ii) the taxpayer applies to the commission.

3343 ~~[(5)]~~ (6) (a) A nonresident ~~[partner's]~~ taxpayer's distributive share of ~~[items]~~ an item of
3344 income, gain, loss, or deduction shall be determined ~~[under Subsection 59-10-302(2)]~~ in
3345 accordance with the principles of Subsections 59-10-1404(3) and (4).

3346 (b) The character of ~~[partnership items]~~ an item of income, gain, loss, or deduction for
3347 a nonresident ~~[partner]~~ taxpayer shall be determined ~~[under Subsection 59-10-302(1)]~~ in
3348 accordance with the principles of Subsections 59-10-1404(1) and (2).

3349 Section 73. **Repealer.**

3350 This bill repeals:

3351 Section **59-10-206, Character of state taxable income of nonresident estate or trust.**

3352 Section **59-10-801, Taxation of limited liability companies.**

3353 Section **59-10-1201, Title.**

3354 Section **59-10-1202, Definitions.**

3355 Section **59-10-1203, Single rate tax for resident or nonresident individual -- Tax**
3356 **rate -- Contributions -- Exemption -- Amended returns.**

3357 Section **59-10-1204, Additions to and subtractions from adjusted gross income of a**
3358 **resident or nonresident individual.**

3359 Section **59-10-1205, Adjustments to adjusted gross income of a resident or**
3360 **nonresident individual.**

3361 Section **59-10-1206, Tax credits.**

3362 Section **59-10-1207, Administration, collection, and enforcement of tax.**

3363 Section 74. **Retrospective operation.**

3364 This bill has retrospective operation for taxable years beginning on or after January 1,
3365 2008.

S.B. 204 2nd Sub. (Salmon) - Income Taxation Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will reduce revenue to the Education Fund by \$2.4 million in FY 2009 and \$2.8 million in FY 2010.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
Education Fund	\$0	\$0	\$0	\$0	(\$2,400,000)	(\$2,800,000)
Total	\$0	\$0	\$0	\$0	(\$2,400,000)	(\$2,800,000)

Individual, Business and/or Local Impact

Individuals, trusts, or estates who invest in medical savings programs are likely to experience decreased tax liability. Individuals who invest proceeds from a long-term or short-term capital gains transaction in a Utah small business corporation will benefit by having decreased tax liability. Small businesses may benefit by having more capital invested from outside sources. In addition to the forementioned, certain businesses currently avoiding corporate income tax will likely experience increased tax liability. There is likely no local impact from passage of this bill.