

**Senator Wayne L. Niederhauser** proposes the following substitute bill:

**TAX REVISIONS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne L. Niederhauser**

House Sponsor: Wayne A. Harper

---

**LONG TITLE**

**General Description:**

This bill amends the Property Tax Act, the Individual Income Tax Act, and related provisions to address procedures related to the property tax residential exemption, the determination of domicile for individual income tax purposes, and the taxation of a pass-through entity.

**Highlighted Provisions:**

This bill:

- ▶ requires a property owner to provide certain notice to the county board of equalization and make a declaration on the property owner's individual income tax return if the property owner is no longer eligible to receive a property tax residential exemption for the property owner's primary residence;
- ▶ allows the State Tax Commission to provide information to a county on a property owner's declaration on an individual income tax return that the property owner is no longer eligible to receive a property tax residential exemption for the property owner's primary residence;
- ▶ addresses the determination of domicile for purposes of Title 59, Chapter 10, Individual Income Tax Act;
- ▶ modifies the definition of "pass-through entity"; and



26           ▶ makes technical and conforming changes.

27 **Money Appropriated in this Bill:**

28           None

29 **Other Special Clauses:**

30           This bill takes effect for a taxable year beginning on or after January 1, 2012.

31 **Utah Code Sections Affected:**

32 AMENDS:

33           **59-1-403**, as last amended by Laws of Utah 2010, Chapters 6 and 67

34           **59-2-103.5**, as last amended by Laws of Utah 2008, Chapter 382

35           **59-10-103.1**, as enacted by Laws of Utah 2000, Chapter 84

36           **59-10-1402**, as last amended by Laws of Utah 2009, Chapter 312

37 ENACTS:

38           **59-10-136**, Utah Code Annotated 1953



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

41           Section 1. Section **59-1-403** is amended to read:

42           **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

43           (1) (a) Any of the following may not divulge or make known in any manner any  
44 information gained by that person from any return filed with the commission:

- 45           (i) a tax commissioner;
- 46           (ii) an agent, clerk, or other officer or employee of the commission; or
- 47           (iii) a representative, agent, clerk, or other officer or employee of any county, city, or  
48 town.

49           (b) An official charged with the custody of a return filed with the commission is not  
50 required to produce the return or evidence of anything contained in the return in any action or  
51 proceeding in any court, except:

- 52           (i) in accordance with judicial order;
- 53           (ii) on behalf of the commission in any action or proceeding under:
  - 54           (A) this title; or
  - 55           (B) other law under which persons are required to file returns with the commission;
- 56           (iii) on behalf of the commission in any action or proceeding to which the commission

57 is a party; or

58 (iv) on behalf of any party to any action or proceeding under this title if the report or  
59 facts shown by the return are directly involved in the action or proceeding.

60 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may  
61 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically  
62 pertinent to the action or proceeding.

63 (2) This section does not prohibit:

64 (a) a person or that person's duly authorized representative from receiving a copy of  
65 any return or report filed in connection with that person's own tax;

66 (b) the publication of statistics as long as the statistics are classified to prevent the  
67 identification of particular reports or returns; and

68 (c) the inspection by the attorney general or other legal representative of the state of the  
69 report or return of any taxpayer:

70 (i) who brings action to set aside or review a tax based on the report or return;

71 (ii) against whom an action or proceeding is contemplated or has been instituted under  
72 this title; or

73 (iii) against whom the state has an unsatisfied money judgment.

74 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the  
75 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative  
76 Rulemaking Act, provide for a reciprocal exchange of information with:

77 (i) the United States Internal Revenue Service; or

78 (ii) the revenue service of any other state.

79 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
80 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,  
81 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and  
82 other written statements with the federal government, any other state, any of the political  
83 subdivisions of another state, or any political subdivision of this state, except as limited by  
84 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal  
85 government grant substantially similar privileges to this state.

86 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
87 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,

88 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the  
89 identity and other information of taxpayers who have failed to file tax returns or to pay any tax  
90 due.

91 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and  
92 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as  
93 requested by the executive secretary, any records, returns, or other information filed with the  
94 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5  
95 regarding the environmental assurance program participation fee.

96 (e) Notwithstanding Subsection (1), at the request of any person the commission shall  
97 provide that person sales and purchase volume data reported to the commission on a report,  
98 return, or other information filed with the commission under:

99 (i) Chapter 13, Part 2, Motor Fuel; or

100 (ii) Chapter 13, Part 4, Aviation Fuel.

101 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,  
102 as defined in Section 59-22-202, the commission shall report to the manufacturer:

103 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
104 manufacturer and reported to the commission for the previous calendar year under Section  
105 59-14-407; and

106 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
107 manufacturer for which a tax refund was granted during the previous calendar year under  
108 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

109 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,  
110 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited  
111 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

112 (h) Notwithstanding Subsection (1), the commission may:

113 (i) provide to the Division of Consumer Protection within the Department of  
114 Commerce and the attorney general data:

115 (A) reported to the commission under Section 59-14-212; or

116 (B) related to a violation under Section 59-14-211; and

117 (ii) upon request, provide to any person data reported to the commission under  
118 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

119 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee  
120 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning  
121 and Budget, provide to the committee or office the total amount of revenues collected by the  
122 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period  
123 specified by the committee or office.

124 (j) Notwithstanding Subsection (1), the commission shall make the directory required  
125 by Section 59-14-603 available for public inspection.

126 (k) Notwithstanding Subsection (1), the commission may share information with  
127 federal, state, or local agencies as provided in Subsection 59-14-606(3).

128 (l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of  
129 Recovery Services within the Department of Human Services any relevant information  
130 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer  
131 who has become obligated to the Office of Recovery Services.

132 (ii) The information described in Subsection (3)(l)(i) may be provided by the Office of  
133 Recovery Services to any other state's child support collection agency involved in enforcing  
134 that support obligation.

135 (m) (i) Notwithstanding Subsection (1), upon request from the state court  
136 administrator, the commission shall provide to the state court administrator, the name, address,  
137 telephone number, county of residence, and Social Security number on resident returns filed  
138 under Chapter 10, Individual Income Tax Act.

139 (ii) The state court administrator may use the information described in Subsection  
140 (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

141 (n) Notwithstanding Subsection (1), the commission shall at the request of a  
142 committee, commission, or task force of the Legislature provide to the committee, commission,  
143 or task force of the Legislature any information relating to a tax imposed under Chapter 9,  
144 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

145 (o) (i) As used in this Subsection (3)(o), "office" means the:

146 (A) Office of the Legislative Fiscal Analyst; or

147 (B) Office of Legislative Research and General Counsel.

148 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii),  
149 the commission shall at the request of an office provide to the office all information:

- 150 (A) gained by the commission; and
- 151 (B) required to be attached to or included in returns filed with the commission.
- 152 (iii) (A) An office may not request and the commission may not provide to an office a
- 153 person's:
- 154 (I) address;
- 155 (II) name;
- 156 (III) Social Security number; or
- 157 (IV) taxpayer identification number.
- 158 (B) The commission shall in all instances protect the privacy of a person as required by
- 159 Subsection (3)(o)(iii)(A).
- 160 (iv) An office may provide information received from the commission in accordance
- 161 with this Subsection (3)(o) only:
- 162 (A) as:
- 163 (I) a fiscal estimate;
- 164 (II) fiscal note information; or
- 165 (III) statistical information; and
- 166 (B) if the information is classified to prevent the identification of a particular return.
- 167 (v) (A) A person may not request information from an office under Title 63G, Chapter
- 168 2, Government Records Access and Management Act, or this section, if that office received the
- 169 information from the commission in accordance with this Subsection (3)(o).
- 170 (B) An office may not provide to a person that requests information in accordance with
- 171 Subsection (3)(o)(v)(A) any information other than the information the office provides in
- 172 accordance with Subsection (3)(o)(iv).
- 173 (p) Notwithstanding Subsection (1), the commission may provide to the governing
- 174 board of the agreement or a taxing official of another state, the District of Columbia, the United
- 175 States, or a territory of the United States:
- 176 (i) the following relating to an agreement sales and use tax:
- 177 (A) information contained in a return filed with the commission;
- 178 (B) information contained in a report filed with the commission;
- 179 (C) a schedule related to Subsection (3)(p)(i)(A) or (B); or
- 180 (D) a document filed with the commission; or

181 (ii) a report of an audit or investigation made with respect to an agreement sales and  
182 use tax.

183 (q) Notwithstanding Subsection (1), the commission may provide information  
184 concerning a taxpayer's state income tax return or state income tax withholding information to  
185 the Driver License Division if the Driver License Division:

186 (i) requests the information; and

187 (ii) provides the commission with a signed release form from the taxpayer allowing the  
188 Driver License Division access to the information.

189 (r) Notwithstanding Subsection (1), the commission shall provide to the Utah [State]  
190 911 Committee the information requested by the Utah [State] 911 Committee under Subsection  
191 53-10-602(3).

192 (s) Notwithstanding Subsection (1), the commission may provide to the Utah  
193 Educational Savings Plan information related to a resident or nonresident individual's  
194 contribution to a Utah Educational Savings Plan account as designated on the resident or  
195 nonresident's individual income tax return under Section 59-10-1313.

196 (t) Notwithstanding Subsection (1), the commission shall provide an eligibility worker  
197 with the Children's Health Insurance Program with the adjusted gross income of an individual  
198 if:

199 (i) an eligibility worker with the Children's Health Insurance Program requests the  
200 information from the [~~Utah State Tax Commission~~] commission; and

201 (ii) the eligibility worker has complied with the identity verification and consent  
202 provisions of Section 26-40-105.

203 (u) Notwithstanding Subsection (1), the commission may provide to a county, as  
204 determined by the commission, information declared on an individual income tax return in  
205 accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption  
206 authorized under Section 59-2-103.

207 (4) (a) Reports and returns shall be preserved for at least three years.

208 (b) After the three-year period provided in Subsection (4)(a) the commission may  
209 destroy a report or return.

210 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

211 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,

212 the person shall be dismissed from office and be disqualified from holding public office in this  
213 state for a period of five years thereafter.

214 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in  
215 accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with  
216 Subsection (3)(o)(v):

217 (i) is not guilty of a class A misdemeanor; and

218 (ii) is not subject to:

219 (A) dismissal from office in accordance with Subsection (5)(b); or

220 (B) disqualification from holding public office in accordance with Subsection (5)(b).

221 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

222 Section 2. Section **59-2-103.5** is amended to read:

223 **59-2-103.5. Procedures to obtain an exemption for residential property --**

224 **Procedure if property owner or property no longer qualifies to receive a residential**  
225 **exemption.**

226 (1) Subject to the other provisions of this section, a county legislative body may by  
227 ordinance require that in order for residential property to be allowed a residential exemption in  
228 accordance with Section 59-2-103, an owner of the residential property shall file with the  
229 county board of equalization a statement:

230 (a) on a form prescribed by the commission by rule;

231 (b) signed by all of the owners of the residential property;

232 (c) certifying that the residential property is residential property; and

233 (d) containing other information as required by the commission by rule.

234 (2) (a) Subject to Section 59-2-103 and except as provided in Subsection (3), a county  
235 board of equalization shall allow an owner described in Subsection (1) a residential exemption  
236 for the residential property described in Subsection (1) if:

237 (i) the county legislative body enacts the ordinance described in Subsection (1); and

238 (ii) the county board of equalization determines that the requirements of Subsection (1)  
239 are met.

240 (b) A county board of equalization may require an owner of the residential property  
241 described in Subsection (1) to file the statement described in Subsection (1) only if:

242 (i) that residential property was ineligible for the residential exemption authorized

243 under Section 59-2-103 during the calendar year immediately preceding the calendar year for  
244 which the owner is seeking to claim the residential exemption for that residential property;

245 (ii) an ownership interest in that residential property changes; or

246 (iii) the county board of equalization determines that there is reason to believe that that  
247 residential property no longer qualifies for the residential exemption in accordance with  
248 Section 59-2-103.

249 (3) Notwithstanding Subsection (2)(a), if a county legislative body does not enact an  
250 ordinance requiring an owner to file a statement in accordance with this section, the county  
251 board of equalization:

252 (a) may not require an owner to file a statement for residential property to be eligible  
253 for a residential exemption in accordance with Section 59-2-103; and

254 (b) shall allow a residential exemption for residential property in accordance with  
255 Section 59-2-103.

256 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
257 the commission shall make rules providing:

258 (i) the form for the statement described in Subsection (1); and

259 (ii) the contents of the form for the statement described in Subsection (1).

260 (b) The commission shall make the form described in Subsection (4)(a) available to  
261 counties.

262 (5) Except as provided in Subsection (6), if a property owner no longer qualifies to  
263 receive a residential exemption authorized under Section 59-2-103 for that property owner's  
264 primary residence, the property owner shall:

265 (a) file a written statement with the county board of equalization of the county in which  
266 the property is located:

267 (i) on a form provided by the county board of equalization; and

268 (ii) notifying the county board of equalization that the property owner no longer  
269 qualifies to receive a residential exemption authorized under Section 59-2-103 for that property  
270 owner's primary residence; and

271 (b) declare on the property owner's individual income tax return under Chapter 10,  
272 Individual Income Tax Act, for the taxable year for which the property owner no longer  
273 qualifies to receive a residential exemption authorized under Section 59-2-103 for that property

274 owner's primary residence, that the property owner no longer qualifies to receive a residential  
275 exemption authorized under Section 59-2-103 for that property owner's primary residence.

276 (6) A property owner is not required to file a written statement or make the declaration  
277 described in Subsection (5) if the property owner:

278 (a) changes primary residences;

279 (b) qualified to receive a residential exemption authorized under Section 59-2-103 for  
280 the residence that was the property owner's former primary residence; and

281 (c) qualifies to receive a residential exemption authorized under Section 59-2-103 for  
282 the residence that is the property owner's current primary residence.

283 Section 3. Section **59-10-103.1** is amended to read:

284 **59-10-103.1. Information to be contained on individual income tax returns or**  
285 **booklets.**

286 (1) The commission shall print the phrase "all state income tax dollars fund education"  
287 on:

288 [(+)] (a) the first page of [the] an individual income tax return; and

289 [(2)] (b) the cover page of [the] an individual income tax forms and instructions  
290 booklet.

291 (2) The commission shall include on an individual income tax return a statement for a  
292 property owner to declare that the property owner no longer qualifies to receive a residential  
293 exemption authorized under Section 59-2-103 for that property owner's primary residence.

294 Section 4. Section **59-10-136** is enacted to read:

295 **59-10-136. Domicile -- Temporary absence from state.**

296 (1) (a) An individual is considered to have domicile in this state if:

297 (i) except as provided in Subsection (1)(b), a dependent with respect to whom the  
298 individual or the individual's spouse claims a personal exemption on the individual's or  
299 individual's spouse's federal individual income tax return is enrolled in a public kindergarten,  
300 public elementary school, or public secondary school in this state; or

301 (ii) the individual or the individual's spouse is a resident student in accordance with  
302 Section 53B-8-102 who is enrolled in an institution of higher education described in Section  
303 53B-2-101 in this state.

304 (b) The determination of whether an individual is considered to have domicile in this

305 state ~~§~~ ~~→~~ ~~[shall]~~ ~~may not~~ ~~←~~ ~~§~~ be determined in accordance with Subsection ~~§~~ ~~→~~ ~~(3)~~ ~~(1)(a)~~ ~~←~~ ~~§~~ if  
 305a the individual:

306 (i) is the noncustodial parent of a dependent:

307 (A) with respect to whom the individual claims a personal exemption on the

308 individual's federal individual income tax return; and

309 (B) who is enrolled in a public kindergarten, public elementary school, or public  
 310 secondary school in this state; and

311 (ii) is divorced from the custodial parent of the dependent described in Subsection

312 (1)(b)(i).

313 (2) There is a rebuttable presumption that an individual is considered to have domicile  
 314 in this state if:

315 (a) the individual or the individual's spouse claims a residential exemption in  
 316 accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's  
 317 primary residence;

318 (b) the individual or the individual's spouse is registered to vote in this state in  
 319 accordance with Title 20A, Chapter 2, Voter Registration; or

320 (c) the individual or the individual's spouse asserts residency in this state for purposes  
 321 of filing an individual income tax return under this chapter, including asserting that the  
 322 individual or the individual's spouse is a part-year resident of this state for the portion of the  
 323 taxable year for which the individual or the individual's spouse is a resident of this state.

324 (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not  
 325 met for an individual to be considered to have domicile in this state, the individual is  
 326 considered to have domicile in this state if:

327 (i) the individual or the individual's spouse has a permanent home in this state to which  
 328 the individual or the individual's spouse intends to return after being absent; and

329 (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the  
 330 individual's spouse's habitation in this state, not for a special or temporary purpose, but with the  
 331 intent of making a permanent home.

332 (b) The determination of whether an individual is considered to have domicile in this  
 333 state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into  
 334 consideration the totality of the following facts and circumstances:

335 (i) whether the individual or the individual's spouse has a driver license in this state;

336 (ii) whether a dependent with respect to whom the individual or the individual's spouse  
337 claims a personal exemption on the individual's or individual's spouse's federal individual  
338 income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled  
339 in an institution of higher education described in Section 53B-2-101 in this state;

340 (iii) the nature and quality of the living accommodations that the individual or the  
341 individual's spouse has in this state as compared to another state;

342 (iv) the presence in this state of a spouse or dependent with respect to whom the  
343 individual or the individual's spouse claims a personal exemption on the individual's or  
344 individual's spouse's federal individual income tax return;

345 (v) the physical location in which earned income as defined in Section 32(c)(2),  
346 Internal Revenue Code, is earned by the individual or the individual's spouse;

347 (vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or  
348 leased by the individual or the individual's spouse;

349 (vii) whether the individual or the individual's spouse is a member of a church, a club,  
350 or another similar organization in this state;

351 (viii) whether the individual or the individual's spouse lists an address in this state on  
352 mail, a telephone listing, a listing in an official government publication, other correspondence,  
353 or another similar item;

354 (ix) whether the individual or the individual's spouse lists an address in this state on a  
355 state or federal tax return;

356 (x) whether the individual or the individual's spouse asserts residency in this state on a  
357 document, other than an individual income tax return filed under this chapter, filed with or  
358 provided to a court or other governmental entity;

359 (xi) the failure of an individual or the individual's spouse to obtain a permit or license  
360 normally required of a resident of the state for which the individual or the individual's spouse  
361 asserts to have domicile; or

362 (xii) whether the individual is an individual described in Subsection (1)(b).

363 (4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions  
364 of this Subsection (4), an individual is not considered to have domicile in this state if the  
365 individual meets the following qualifications:

366 (i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's

367 spouse are absent from the state for at least ~~§~~ [730] 761 ~~←§~~ consecutive days; and  
368 (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor  
369 the individual's spouse:  
370 (A) return to this state for more than 30 days in a calendar year;  
371 (B) claim a personal exemption on the individual's or individual's spouse's federal  
372 individual income tax return with respect to a dependent who is enrolled in a public  
373 kindergarten, public elementary school, or public secondary school in this state, unless the  
374 individual is an individual described in Subsection (1)(b);  
375 (C) are resident students in accordance with Section 53B-8-102 who are enrolled in an  
376 institution of higher education described in Section 53B-2-101 in this state;  
377 (D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for  
378 that individual's or individual's spouse's primary residence; or  
379 (E) assert that this state is the individual's or the individual's spouse's tax home for  
380 federal individual income tax purposes.  
381 (b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of  
382 Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered  
383 to have domicile in this state by filing an individual income tax return in this state as a resident  
384 individual.  
385 (c) For purposes of Subsection (4)(a), an absence from the state:  
386 (i) begins on the later of the date:  
387 (A) the individual leaves this state; or  
388 (B) the individual's spouse leaves this state; and  
389 (ii) ends on the date the individual or the individual's spouse returns to this state if the  
390 individual or the individual's spouse remains in this state for more than 30 days in a calendar  
391 year.  
392 (d) An individual shall file an individual income tax return or amended individual  
393 income tax return under this chapter and pay any applicable interest imposed under Section  
394 59-1-402 if:  
395 (i) the individual did not file an individual income tax return or amended individual  
396 income tax return under this chapter based on the individual's belief that the individual has met  
397 the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

398 (ii) the individual or the individual's spouse fails to meet a qualification of Subsection  
399 (4)(a) to not be considered to have domicile in this state.

400 (e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual  
401 income tax return or amended individual income tax return under Subsection (4)(d) shall pay  
402 any applicable penalty imposed under Section 59-1-401.

403 (ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and  
404 (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return  
405 or amended individual income tax return under this chapter:

406 (A) files the individual income tax return or amended individual income tax return  
407 within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be  
408 considered to have domicile in this state; and

409 (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax  
410 due on the return, any interest imposed under Section 59-1-402, and any applicable penalty  
411 imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or  
412 (5).

413 (5) (a) If an individual is considered to have domicile in this state in accordance with  
414 this section, the individual's spouse is considered to have domicile in this state.

415 (b) For purposes of this section, an individual is not considered to have a spouse if:

416 (i) the individual is legally separated or divorced from the spouse; or

417 (ii) the individual and the individual's spouse claim married filing separately filing  
418 status for purposes of filing a federal individual income tax return for the taxable year.

419 (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an  
420 individual's filing status on a federal individual income tax return or a return filed under this  
421 chapter may not be considered in determining whether an individual has a spouse.

422 (6) For purposes of this section, whether or not an individual or the individual's spouse  
423 claims a property tax residential exemption under Chapter 2, Property Tax Act, for the  
424 residential property that is the primary residence of a tenant of the individual or the individual's  
425 spouse may not be considered in determining domicile in this state.

426 Section 5. Section **59-10-1402** is amended to read:

427 **59-10-1402. Definitions.**

428 As used in this part:

- 429 (1) "Addition, subtraction, or adjustment" means:
- 430 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal
- 431 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes:
- 432 (i) an addition to unadjusted income described in Section 59-7-105; or
- 433 (ii) a subtraction from unadjusted income described in Section 59-7-106;
- 434 (b) for a pass-through entity taxpayer that is classified as an individual, partnership, or
- 435 S corporation for federal income tax purposes:
- 436 (i) an addition to or subtraction from adjusted gross income described in Section
- 437 59-10-114; or
- 438 (ii) an adjustment to adjusted gross income described in Section 59-10-115; or
- 439 (c) for a pass-through entity taxpayer that is classified as an estate or a trust for federal
- 440 income tax purposes:
- 441 (i) an addition to or subtraction from unadjusted income described in Section
- 442 59-10-202; or
- 443 (ii) an adjustment to unadjusted income described in Section 59-10-209.1.
- 444 (2) "Business income" means income arising from transactions and activity in the
- 445 regular course of a pass-through entity's trade or business and includes income from tangible
- 446 and intangible property if the acquisition, management, and disposition of the property
- 447 constitutes integral parts of the pass-through entity's regular trade or business operations.
- 448 (3) "C corporation" is as defined in Section 1361, Internal Revenue Code.
- 449 (4) "Commercial domicile" means the principal place from which the trade or business
- 450 of a business entity is directed or managed.
- 451 (5) "Derived from or connected with Utah sources" means:
- 452 (a) if a pass-through entity taxpayer is classified as a C corporation for federal income
- 453 tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part
- 454 3, Allocation and Apportionment of Income - Utah UDITPA Provisions; or
- 455 (b) if a pass-through entity or pass-through entity taxpayer is classified as an estate,
- 456 individual, partnership, S corporation, or a trust for federal income tax purposes, derived from
- 457 or connected with Utah sources in accordance with Sections 59-10-117 and 59-10-118.
- 458 (6) "Nonbusiness income" means all income of a pass-through entity other than
- 459 business income.

460 (7) "Nonresident business entity" means a business entity that does not have its  
461 commercial domicile in this state.

462 (8) "Nonresident pass-through entity taxpayer" means a pass-through entity taxpayer  
463 that is a:

464 (a) nonresident individual; or

465 (b) nonresident business entity.

466 (9) ~~(a)~~ "Pass-through entity" means a business entity that is:

467 ~~(i)~~ (a) the following if classified as a partnership for federal income tax purposes:

468 ~~(A)~~ (i) a general partnership;

469 ~~(B)~~ (ii) a limited liability company;

470 ~~(C)~~ (iii) a limited liability partnership; or

471 ~~(D)~~ (iv) a limited partnership;

472 ~~(i)~~ (b) an S corporation; ~~or~~

473 (c) an estate or trust with respect to which the estate's or trust's income, gain, loss,

474 deduction, or credit is divided among and passed through to one or more pass-through entity

475 taxpayers; or

476 ~~(iii)~~ (d) a business entity similar to ~~Subsection~~ Subsections (9)(a)(i) or (ii) through

477 (c):

478 ~~(A)~~ (i) with respect to which the business entity's income, gain, loss, deduction, or  
479 credit is divided among and passed through to one or more pass-through entity taxpayers; and

480 ~~(B)~~ (ii) as defined by the commission by rule made in accordance with Title 63G,  
481 Chapter 3, Utah Administrative Rulemaking Act.

482 ~~(b) "Pass-through entity" does not include an estate or trust that is classified as an~~  
483 ~~estate or trust for federal income tax purposes.]~~

484 (10) "Pass-through entity taxpayer" means a resident or nonresident individual, a  
485 resident or nonresident business entity, or a resident or nonresident estate or trust:

486 (a) that is:

487 (i) for a general partnership, a partner;

488 (ii) for a limited liability company, a member;

489 (iii) for a limited liability partnership, a partner;

490 (iv) for a limited partnership, a partner;

491 (v) for an S corporation, a shareholder; ~~[or]~~  
492 (vi) for an estate or trust, a beneficiary; or  
493 ~~[(vi)]~~ (vii) for a business entity described in Subsection (9)~~[(a)(iii)]~~(d), a member,  
494 partner, shareholder, or other title designated by the commission by rule made in accordance  
495 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

496 (b) to which the income, gain, loss, deduction, or credit of a pass-through entity is  
497 passed through.

498 (11) "Resident business entity" means a business entity that is not a nonresident  
499 business entity.

500 (12) "Resident pass-through entity taxpayer" means a pass-through entity taxpayer that  
501 is a:

502 (a) resident individual; or

503 (b) resident business entity.

504 (13) "Return" means a return that a pass-through entity taxpayer files:

505 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal  
506 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or

507 (b) for a pass-through entity taxpayer that is classified as an estate, individual,  
508 partnership, S corporation, or a trust for federal income tax purposes, under this chapter.

509 (14) "S corporation" is as defined in Section 1361, Internal Revenue Code.

510 (15) "Share of income, gain, loss, deduction, or credit of a pass-through entity" means:

511 (a) for a pass-through entity except for a pass-through entity that is an S corporation:

512 (i) for a resident pass-through entity taxpayer, the resident pass-through entity  
513 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through  
514 entity as determined under Section 704 et seq., Internal Revenue Code; and

515 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity  
516 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through  
517 entity:

518 (A) as determined under Section 704 et seq., Internal Revenue Code; and

519 (B) derived from or connected with Utah sources; or

520 (b) for an S corporation:

521 (i) for a resident pass-through entity taxpayer, the resident pass-through entity

522 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation, as  
523 determined under Sec. 1366 et seq., Internal Revenue Code; or

524 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity

525 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation:

526 (A) as determined under Section 1366 et seq., Internal Revenue Code; and

527 (B) derived from or connected with Utah sources.

528 **Section 6. Effective date.**

529 This bill takes effect for a taxable year beginning on or after January 1, 2012.

# FISCAL NOTE

S.B. 21 1st Sub. (Green)

SHORT TITLE: Tax Revisions - As Amended

SPONSOR: Niederhauser, W.

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill increases ongoing revenue to the Education Fund by \$5,000 beginning in FY 2013. The bill also imposes withholding on estates and trusts, which increases one-time revenue to the Education Fund by \$2,116,500 in FY 2012.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
<b>Revenue:</b>			
Education Fund	\$0	\$5,000	\$5,000
Education Fund, One-Time	\$0	\$2,111,500	\$0
Total Revenue	\$0	\$2,116,500	\$5,000
<b>Expenditure</b>			
	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	\$2,116,500	\$5,000
Net Impact, General/Education Funds	\$0	\$2,116,500	\$5,000

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Certain individuals subject to the provisions of the bill can expect an income tax increase, whereas other individuals subject to the bill will experience an income tax decrease.