

1 **STUDENT PROSPERITY SAVINGS PROGRAM - TAX**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jeremy A. Peterson**

6 Senate Sponsor: _____

7

8 **LONG TITLE**

9 **Committee Note:**

10 The Revenue and Taxation Interim Committee recommended this bill.

11 **General Description:**

12 This bill creates the Student Prosperity Savings Program and related corporate and
13 individual tax benefits.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ defines terms;
- 17 ▶ creates the Student Prosperity Savings Program;
- 18 ▶ provides a method for donating to the Student Prosperity Savings Program and
19 obtaining proof of the donation;
- 20 ▶ provides a process for certain high school students to obtain tax-advantaged college
21 savings accounts;
- 22 ▶ permits a corporation to subtract a donation to the Student Prosperity Savings
23 Program from unadjusted income;
- 24 ▶ creates an individual tax credit for a donation to the Student Prosperity Savings
25 Program; and
- 26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**



This bill appropriates in fiscal year 2018:

- ▶ to the Board of Regents -- Administration, as a one-time appropriation:
 - from the General Fund, \$40,000.
- ▶ to the Board of Regents -- Administration, as an ongoing appropriation:
 - from the General Fund, \$10,000.

Other Special Clauses:

This bill provides a special effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

- 53B-8a-102**, as last amended by Laws of Utah 2015, Chapter 94
- 59-7-105**, as last amended by Laws of Utah 2015, Chapter 30
- 59-7-106**, as last amended by Laws of Utah 2015, Chapters 30 and 94
- 59-10-114**, as last amended by Laws of Utah 2016, Chapter 263
- 59-10-202**, as last amended by Laws of Utah 2010, Chapter 6
- 59-10-1017**, as last amended by Laws of Utah 2015, Chapter 94

ENACTS:

- 53B-8a-102.5**, Utah Code Annotated 1953
- 53B-8a-201**, Utah Code Annotated 1953
- 53B-8a-202**, Utah Code Annotated 1953
- 53B-8a-203**, Utah Code Annotated 1953
- 53B-8a-204**, Utah Code Annotated 1953
- 53B-8a-205**, Utah Code Annotated 1953
- 59-10-1017.1**, Utah Code Annotated 1953

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

Section 1. Section **53B-8a-102** is amended to read:

Part 1. Utah Educational Savings Plan

53B-8a-102. Definitions for chapter.

As used in this chapter:

- (1) "Account agreement" means an agreement between an account owner and the Utah

Educational Savings Plan entered into under this chapter.

(2) "Account owner" means a person, estate, or trust, if that person, estate, or trust has entered into an account agreement under this chapter to save for the higher education costs on behalf of a beneficiary.

~~[(3) "Administrative fund" means the money used to administer the Utah Educational Savings Plan.]~~

~~[(4)]~~ (3) "Beneficiary" means the individual designated in an account agreement to benefit from the amount saved for higher education costs.

~~[(5) "Board" means the board of directors of the Utah Educational Savings Plan which is the state Board of Regents acting in its capacity as the Utah Higher Education Assistance Authority under Title 53B, Chapter 12, Higher Education Assistance Authority.]~~

~~[(6) "Endowment fund" means the endowment fund established under Section 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan.]~~

~~[(7) "Executive director" means the administrator appointed to administer and manage the Utah Educational Savings Plan.]~~

~~[(8) "Federally insured depository institution" means an institution whose deposits and accounts are to any extent insured by a federal deposit insurance agency, including the Federal Deposit Insurance Corporation and the National Credit Union Administration.]~~

~~[(9) "Grantor trust" means a trust, the income of which is for the benefit of the grantor under Section 677, Internal Revenue Code.]~~

~~[(10) "Higher education costs" means qualified higher education expenses as defined in Section 529(e)(3), Internal Revenue Code.]~~

~~[(11) "Owner of the grantor trust" means one or more individuals who are treated as an owner of a trust under Section 677, Internal Revenue Code, if that trust is a grantor trust.]~~

~~[(12)]~~ (4) "Plan" means the Utah Educational Savings Plan created in Section 53B-8a-103.

~~[(13) "Program fund" means the program fund created under Section 53B-8a-107, which is held as a separate fund within the Utah Educational Savings Plan.]~~

~~[(14) "Qualified investment" means an amount invested in accordance with an account agreement established under this chapter.]~~

~~[(15) "Tuition and fees" means the quarterly or semester charges imposed to attend an~~

institution of higher education and required as a condition of enrollment.]

Section 2. Section **53B-8a-102.5** is enacted to read:

53B-8a-102.5. Definitions for part.

As used in this part:

(1) "Administrative fund" means the money used to administer the Utah Educational Savings Plan.

(2) "Board" means the board of directors of the Utah Educational Savings Plan, which is the State Board of Regents acting in the State Board of Regents' capacity as the Utah Higher Education Assistance Authority under Title 53B, Chapter 12, Higher Education Assistance Authority.

(3) "Endowment fund" means the endowment fund established under Section [53B-8a-107](#), which is held as a separate fund within the Utah Educational Savings Plan.

(4) "Executive director" means the administrator appointed to administer and manage the Utah Educational Savings Plan.

(5) "Federally insured depository institution" means an institution whose deposits and accounts are to any extent insured by a federal deposit insurance agency, including the Federal Deposit Insurance Corporation and the National Credit Union Administration.

(6) "Grantor trust" means a trust, the income of which is for the benefit of the grantor under Section 677, Internal Revenue Code.

(7) "Higher education costs" means qualified higher education expenses as defined in Section 529(e)(3), Internal Revenue Code.

(8) "Owner of the grantor trust" means one or more individuals who are treated as an owner of a trust under Section 677, Internal Revenue Code, if that trust is a grantor trust.

(9) "Program fund" means the program fund created under Section [53B-8a-107](#), which is held as a separate fund within the Utah Educational Savings Plan.

(10) "Qualified investment" means an amount invested in accordance with an account agreement established under this part.

(11) "Tuition and fees" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

Section 3. Section **53B-8a-201** is enacted to read:

Part 2. Student Prosperity Savings Program

53B-8a-201. Definitions.

As used in this part:

(1) "529 savings account" means a tax-advantaged method of saving for higher education costs on behalf of a particular individual that:

(a) meets the requirements of Section 529, Internal Revenue Code; and

(b) is managed by the plan.

(2) "Child" means an individual less than 20 years of age.

(3) "Community partner" means a nonprofit organization that provides services to a child who is economically disadvantaged or a family that has at least one child or foster child who is economically disadvantaged.

(4) "Donation" means a gift, grant, donation, or any other conveyance of money by a person other than the Legislature that is not made directly for the benefit or on behalf of a particular individual.

(5) "Economically disadvantaged" means that a child is:

(a) experiencing intergenerational poverty;

(b) a member or foster child of a family with an annual income at or below 185% of the federal poverty level; or

(c) living with a legal custodian or legal guardian with an annual family income at or below 185% of the federal poverty level.

(6) "Eligible individual" means an individual who:

(a) is at least 15 years of age and under 20 years of age;

(b) is a student in grade 10, grade 11, or grade 12 in Utah;

(c) is economically disadvantaged; and

(d) receives, or has a family member, a foster family member, or a legal custodian or legal guardian who receives, services from a community partner.

(7) "Federal poverty level" means the poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services in the Federal Register.

(8) "Higher education costs" means the same as that term is defined in Section 53B-8a-102.5, except that the expenses must be incurred at:

(a) a credit-granting institution of higher education within the state system of higher

education;

(b) a private, nonprofit college or university in the state that is accredited by the Northwestern Association of Schools and Colleges; or

(c) a college within the Utah College of Applied Technology.

(9) "Intergenerational poverty" means the same as that term is defined in Section 35A-9-102.

(10) "Program" means the Student Prosperity Savings Program created in Section 53B-8a-202.

Section 4. Section **53B-8a-202** is enacted to read:

53B-8a-202. Student Prosperity Savings Program.

(1) There is created the Student Prosperity Savings Program.

(2) The program is funded by:

(a) appropriations from the Legislature; and

(b) donations made in accordance with Section 53B-8a-203.

(3) (a) The plan shall administer the program.

(b) The plan shall use the program to create 529 savings accounts in accordance with this part.

Section 5. Section **53B-8a-203** is enacted to read:

53B-8a-203. Donations to the program.

(1) (a) A person may make a donation to the program by:

(i) sending the donation to the plan; and

(ii) including with the donation, direction that the donation benefit the program.

(b) A person making a donation shall include the person's name and mailing address with the donation.

(2) (a) The plan shall mail a receipt to the person that makes the donation.

(b) The receipt described in Subsection (2)(a) shall state:

(i) the name of the person that made the donation;

(ii) the amount of the donation; and

(iii) the date on which the person makes the donation.

(c) The date on which the person makes a donation to the program is the date on which the plan receives the donation, unless the plan receives the donation on a Saturday, a Sunday,

or a holiday, in which case the date on which the person makes the donation shall be the first business day after the day on which the plan receives the donation.

(d) A person that receives a receipt described in Subsection (2)(a) shall retain the receipt for the same time period a person is required to keep books and records under Section 59-1-1406.

Section 6. Section **53B-8a-204** is enacted to read:

53B-8a-204. Distribution of program money -- Application process --
Prioritization -- Account agreements.

(1) The plan shall distribute money in the program by creating a 529 savings account for an eligible individual identified by a community partner.

(2) (a) (i) The plan shall carry out the responsibility described in Subsection (1) by establishing a process in which a community partner may apply for an allocation of program money to designate for eligible individuals.

(ii) The State Board of Regents shall establish the application process for a community partner to apply for an allocation of program money.

(iii) The application process described in Subsection (2)(a)(ii) shall include:

(A) the criteria for a community partner to apply for an allocation of program money;

(B) the criteria that the plan will use to prioritize applications if the dollar amounts requested in the applications exceed the dollar amount available;

(C) the requirements for establishing a 529 savings account in the name of an eligible individual; and

(D) the roles and responsibilities of a community partner that makes a successful application for an allocation of program money.

(b) (i) A community partner that receives an allocation of program money shall enter into a contract with the plan.

(ii) The contract described in Subsection (2)(b)(i) shall:

(A) define the roles and responsibilities of the community partner and the plan with regard to the community partner's allocation of program money; and

(B) specify that the individual the community partner identifies to receive a portion of the community partner's allocation is an eligible individual.

(3) If the plan approves a community partner's application for an allocation of program

money, the plan may not promise or otherwise encumber the allocation to any other person unless the allocation is forfeited under Subsection (5)(b)(ii).

(4) (a) A community partner shall identify each eligible individual who will receive a portion of the community partner's allocation of program money.

(b) After a community partner identifies an eligible individual to receive a portion of the community partner's allocation, the community partner shall notify the plan of:

(i) the amount of the community partner's allocation that shall transfer to a 529 savings account in the name of the identified eligible individual; and

(ii) the amount, if any, that the community partner will be contributing in accordance with Part 1, Utah Educational Savings Plan, to the 529 savings account on behalf of the identified eligible individual.

(5) (a) Upon receiving the information described in Subsection (4)(b), the plan shall establish a 529 savings account for the identified eligible individual, with the community partner as the account owner.

(b) The community partner shall inform the beneficiary that:

(i) within three years after the day on which the beneficiary graduates from high school, the beneficiary shall enroll in:

(A) a credit-granting institution of higher education within the state system of higher education;

(B) a private, nonprofit college or university in the state that is accredited by the Northwestern Association of Schools and Colleges; or

(C) a college within the Utah College of Applied Technology; and

(ii) if the beneficiary fails to enroll within three years after the day on which the beneficiary graduates from high school, any money that remains in the 529 savings account shall be returned to the program.

(c) After entering into the account agreement described in Subsection (5)(a), the plan shall deposit into the beneficiary's 529 savings account the amount of the allocation described in Subsection (4)(b)(i).

Section 7. Section **53B-8a-205** is enacted to read:

53B-8a-205. Application of other provisions of this chapter.

The provisions of Part 1, Utah Educational Savings Plan, except Subsection

53B-8a-109(3), govern the 529 savings accounts established under the Student Prosperity Savings Program.

Section 8. Section **59-7-105** is amended to read:

59-7-105. Additions to unadjusted income.

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

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

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

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

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

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

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

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

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

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

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

(9) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed

under Section 59-7-107;

(10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a corporation that is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the corporation that is the account owner:

(a) is not expended for:

(i) higher education costs as defined in Section ~~53B-8a-102~~ 53B-8a-102.5; or

(ii) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(b) is subtracted by the corporation:

(i) that is the account owner; and

(ii) in accordance with Subsection 59-7-106 (1)(r); and

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

Section 9. Section 59-7-106 is amended to read:

59-7-106. Subtractions from unadjusted income.

(1) In computing adjusted income, the following amounts shall be subtracted from unadjusted income:

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

(b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct the net capital loss on the return filed under this chapter for the taxable year for which the net capital loss is incurred;

(c) the decrease in salary expense deduction for federal income tax purposes due to claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

(d) the decrease in qualified research and basic research expense deduction for federal income tax purposes due to claiming the federal credit for increasing research activities under Section 41, Internal Revenue Code;

(e) the decrease in qualified clinical testing expense deduction for federal income tax purposes due to claiming the federal credit for clinical testing expenses for certain drugs for rare diseases or conditions under Section 45C, Internal Revenue Code;

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

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

(h) any income on the federal corporation income tax return that has been previously taxed by Utah;

(i) an amount included in federal taxable income that is due to a refund of a tax, including a franchise tax, an income tax, a corporate stock and business tax, or an occupation tax:

(i) if that tax is imposed for the privilege of:

(A) doing business; or

(B) exercising a corporate franchise;

(ii) if that tax is paid by the corporation to:

(A) Utah;

(B) another state of the United States;

(C) a foreign country;

(D) a United States possession; or

(E) the Commonwealth of Puerto Rico; and

(iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

(j) a charitable contribution, to the extent the charitable contribution is allowed as a subtraction under Section 59-7-109;

(k) subject to Subsection (3), 50% of a dividend considered to be received or received from a subsidiary that:

(i) is a member of the unitary group;

(ii) is organized or incorporated outside of the United States; and

(iii) is not included in a combined report under Section 59-7-402 or 59-7-403;

(l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a foreign operating company;

(m) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, if an election has been made in accordance with Section 338(h)(10), Internal Revenue Code;

(n) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal Revenue Code, has been made for federal purposes;

(o) subject to Subsection (5), an adjustment to the following due to a difference between basis for federal purposes and basis as computed under Section 59-7-107:

(i) an amortization expense;

(ii) a depreciation expense;

(iii) a gain;

(iv) a loss; or

(v) an item similar to Subsections (1)(o)(i) through (iv);

(p) an interest expense that is not deducted on a federal corporation income tax return under Section 265(b) or 291(e), Internal Revenue Code;

(q) 100% of dividends received from a subsidiary that is an insurance company if that subsidiary that is an insurance company is:

(i) exempt from this chapter under Subsection 59-7-102(1)(c); and

(ii) under common ownership;

(r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as defined in Section 53B-8a-102 ~~[shall subtract]~~, the amount of a qualified investment as defined in Section ~~[53B-8a-102]~~ 53B-8a-102.5:

(i) that the corporation or a person other than the corporation makes into an account owned by the corporation during the taxable year;

(ii) to the extent that neither the corporation nor the person other than the corporation described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax return; and

(iii) to the extent the qualified investment does not exceed the maximum amount of the qualified investment that may be subtracted from unadjusted income for a taxable year in

369 accordance with Subsection [53B-8a-106\(1\)](#);

370 (s) for a corporation that makes a donation, as that term is defined in Section
371 [53B-8a-201](#), to the Student Prosperity Savings Program created in Section [53B-8a-202](#), the
372 amount of the donation to the extent that the corporation did not deduct the donation on a
373 federal income tax return;

374 ~~[(s)]~~ (t) for purposes of income included in a combined report under Part 4, Combined
375 Reporting, the entire amount of the dividends a member of a unitary group receives or is
376 considered to receive from a captive real estate investment trust; and

377 ~~[(t)]~~ (u) the increase in income for federal income tax purposes due to claiming a:

378 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

379 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code.

380 (2) For purposes of Subsection (1)(b):

381 (a) the subtraction shall be made by claiming the subtraction on a return filed:

382 (i) under this chapter for the taxable year for which the net capital loss is incurred; and

383 (ii) by the due date of the return, including extensions; and

384 (b) a net capital loss for a taxable year shall be:

385 (i) subtracted for the taxable year for which the net capital loss is incurred; or

386 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
387 Code.

388 (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a
389 taxpayer shall first subtract from a dividend considered to be received or received an expense
390 directly attributable to that dividend.

391 (b) For purposes of Subsection (3)(a), the amount of an interest expense that is
392 considered to be directly attributable to a dividend is calculated by multiplying the interest
393 expense by a fraction:

394 (i) the numerator of which is the taxpayer's average investment in the dividend paying
395 subsidiaries; and

396 (ii) the denominator of which is the taxpayer's average total investment in assets.

397 (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in
398 determining income apportionable to this state, a portion of the factors of a foreign subsidiary
399 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the

combined report factors as provided in this Subsection (3)(c).

(ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be included in the combined report factors is calculated by multiplying each factor of the foreign subsidiary by a fraction:

(A) not to exceed 100%; and

(B) (I) the numerator of which is the amount of the dividend paid by the foreign subsidiary that is included in adjusted income; and

(II) the denominator of which is the current year earnings and profits of the foreign subsidiary as determined under the Internal Revenue Code.

(4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under Subsection (1)(l):

(i) if the taxpayer elects to file a worldwide combined report as provided in Section 59-7-403; or

(ii) for the following:

(A) income generated from intangible property; or

(B) a capital gain, dividend, interest, rent, royalty, or other similar item that is generated from an asset held for investment and not from a regular business trading activity.

(b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating company:

(i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

(ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a transaction that occurs between members of a unitary group.

(c) For purposes of the subtraction provided for in Subsection (1)(l), in determining income apportionable to this state, the factors for a foreign operating company shall be included in the combined report factors in the same percentages as the foreign operating company's adjusted income is included in the combined adjusted income.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes:

(i) income generated from intangible property; or

(ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is

generated from an asset held for investment and not from a regular business trading activity.

(5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax credit is claimed if:

(i) there is a reduction in federal basis for a federal tax credit; and

(ii) there is no corresponding tax credit allowed in this state.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes an item similar to Subsections (1)(o)(i) through (iv).

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

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

(1) There shall be added to adjusted gross income of a resident or nonresident individual:

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

(b) the amount of a child's income calculated under Subsection (4) that:

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

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

(c) (i) a withdrawal from a medical care savings account and any penalty imposed for the taxable year if:

(A) the resident or nonresident individual does not deduct the amounts on the resident or nonresident individual's federal individual income tax return under Section 220, Internal Revenue Code;

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

(C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a return the resident or nonresident individual files under this chapter;

(ii) a disbursement required to be added to adjusted gross income in accordance with Subsection 31A-32a-105(3); or

462 (iii) an amount required to be added to adjusted gross income in accordance with
463 Subsection [31A-32a-105\(5\)\(c\)](#);

464 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
465 from the account of a resident or nonresident individual who is an account owner as defined in
466 Section [53B-8a-102](#), for the taxable year for which the amount is withdrawn, if that amount
467 withdrawn from the account of the resident or nonresident individual who is the account
468 owner:

469 (i) is not expended for:

470 (A) higher education costs as defined in Section [~~53B-8a-102~~] [53B-8a-102.5](#); or

471 (B) a payment or distribution that qualifies as an exception to the additional tax for
472 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
473 Internal Revenue Code; and

474 (ii) is:

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

476 (I) who is the account owner; and

477 (II) on the resident or nonresident individual's return filed under this chapter for a
478 taxable year beginning on or before December 31, 2007; or

479 (B) used as the basis for the resident or nonresident individual who is the account
480 owner to claim a tax credit under Section [59-10-1017](#);

481 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of
482 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
483 evidences of indebtedness issued by one or more of the following entities:

484 (i) a state other than this state;

485 (ii) the District of Columbia;

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

487 (iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i) through
488 (iii);

489 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a
490 resident trust of income that was taxed at the trust level for federal tax purposes, but was
491 subtracted from state taxable income of the trust pursuant to Subsection [59-10-202\(2\)\(b\)](#);

492 (g) any distribution received by a resident beneficiary of a nonresident trust of

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

(h) any adoption expense:

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

(ii) to the extent to which the resident or nonresident individual subtracts that adoption expense:

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

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

(2) There shall be subtracted from adjusted gross income of a resident or nonresident individual:

(a) the difference between:

(i) the interest or a dividend on an obligation or security of the United States or an authority, commission, instrumentality, or possession of the United States, to the extent that interest or dividend is:

(A) included in adjusted gross income for federal income tax purposes for the taxable year; and

(B) exempt from state income taxes under the laws of the United States; and

(ii) any interest on indebtedness incurred or continued to purchase or carry the obligation or security described in Subsection (2)(a)(i);

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

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

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

(c) an amount received by a resident or nonresident individual or distribution received by a resident or nonresident beneficiary of a resident trust:

524 (i) if that amount or distribution constitutes a refund of taxes imposed by:
525 (A) a state; or
526 (B) the District of Columbia; and
527 (ii) to the extent that amount or distribution is included in adjusted gross income for
528 that taxable year on the federal individual income tax return of the resident or nonresident
529 individual or resident or nonresident beneficiary of a resident trust;
530 (d) the amount of a railroad retirement benefit:
531 (i) paid:
532 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
533 seq.;
534 (B) to a resident or nonresident individual; and
535 (C) for the taxable year; and
536 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
537 that resident or nonresident individual's federal individual income tax return for that taxable
538 year; and
539 (e) an amount:
540 (i) received by an enrolled member of an American Indian tribe; and
541 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
542 part on that amount in accordance with:
543 (A) federal law;
544 (B) a treaty; or
545 (C) a final decision issued by a court of competent jurisdiction.
546 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:
547 (i) the taxpayer is a Ute tribal member; and
548 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
549 requirements of this Subsection (3).
550 (b) The agreement described in Subsection (3)(a):
551 (i) may not:
552 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
553 (B) provide a subtraction under this section greater than or different from the
554 subtraction described in Subsection (2)(b); or

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

(ii) shall:

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

(B) be in writing;

(C) be signed by:

(I) the governor; and

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

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

(E) state the effective date of the agreement.

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

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

(d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

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

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

(4) (a) For purposes of this Subsection (4), "Form 8814" means:

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

(ii) (A) a form designated by the commission in accordance with Subsection (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814; and

(B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal individual income

taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814.

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

(i) the lesser of:

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

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

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

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

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

(5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(e)(i) through (iv) may not be added to adjusted gross income of a resident or nonresident individual if, as annually determined by the commission:

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

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

(i) the entity; or

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

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

Section 11. Section **59-10-202** is amended to read:

59-10-202. Additions to and subtractions from unadjusted income of a resident or nonresident estate or trust.

(1) There shall be added to unadjusted income of a resident or nonresident estate or trust:

(a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in

determining adjusted gross income;

(b) except as provided in Subsection (3), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more of the following entities:

(i) a state other than this state;

(ii) the District of Columbia;

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

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

(c) any portion of federal taxable income for a taxable year if that federal taxable income is derived from stock:

(i) in an S corporation; and

(ii) that is held by an electing small business trust;

(d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a resident or nonresident estate or trust that is an account owner as defined in Section [53B-8a-102](#), for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or trust that is the account owner:

(i) is not expended for:

(A) higher education costs as defined in Section [\[53B-8a-102\]](#) [53B-8a-102.5](#); or

(B) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(ii) is:

(A) subtracted by the resident or nonresident estate or trust:

(I) that is the account owner; and

(II) on the resident or nonresident estate's or trust's return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) used as the basis for the resident or nonresident estate or trust that is the account owner to claim a tax credit under Section [59-10-1017](#); and

(e) any fiduciary adjustments required by Section [59-10-210](#).

648 (2) There shall be subtracted from unadjusted income of a resident or nonresident
649 estate or trust:

650 (a) the interest or a dividend on obligations or securities of the United States and its
651 possessions or of any authority, commission, or instrumentality of the United States, to the
652 extent that interest or dividend is included in gross income for federal income tax purposes for
653 the taxable year but exempt from state income taxes under the laws of the United States, but
654 the amount subtracted under this Subsection (2) shall be reduced by any interest on
655 indebtedness incurred or continued to purchase or carry the obligations or securities described
656 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
657 income described in this Subsection (2) to the extent that such expenses, including amortizable
658 bond premiums, are deductible in determining federal taxable income;

659 (b) income of an irrevocable resident trust if:

660 (i) the income would not be treated as state taxable income derived from Utah sources
661 under Section 59-10-204 if received by a nonresident trust;

662 (ii) the trust first became a resident trust on or after January 1, 2004;

663 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
664 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

665 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

666 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the
667 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,
668 Subchapter J, Subpart E of the Internal Revenue Code; and

669 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on
670 indebtedness incurred or continued to purchase or carry the assets generating the income
671 described in this Subsection (2)(b), and by any expenses incurred in the production of income
672 described in this Subsection (2)(b), to the extent that those expenses, including amortizable
673 bond premiums, are deductible in determining federal taxable income;

674 (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or
675 nonresident estate or trust derived from a deceased Ute tribal member:

676 (i) during a time period that the Ute tribal member resided on homesteaded land
677 diminished from the Uintah and Ouray Reservation; and

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

679 (d) any amount:
680 (i) received by a resident or nonresident estate or trust;
681 (ii) that constitutes a refund of taxes imposed by:
682 (A) a state; or
683 (B) the District of Columbia; and
684 (iii) to the extent that amount is included in total income on that resident or nonresident
685 estate's or trust's federal tax return for estates and trusts for that taxable year;
686 (e) the amount of a railroad retirement benefit:
687 (i) paid:
688 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
689 seq.;
690 (B) to a resident or nonresident estate or trust derived from a deceased resident or
691 nonresident individual; and
692 (C) for the taxable year; and
693 (ii) to the extent that railroad retirement benefit is included in total income on that
694 resident or nonresident estate's or trust's federal tax return for estates and trusts;
695 (f) an amount:
696 (i) received by a resident or nonresident estate or trust if that amount is derived from a
697 deceased enrolled member of an American Indian tribe; and
698 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
699 part on that amount in accordance with:
700 (A) federal law;
701 (B) a treaty; or
702 (C) a final decision issued by a court of competent jurisdiction;
703 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section
704 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the
705 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for
706 the taxable year; and
707 (h) any fiduciary adjustments required by Section 59-10-210.
708 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences
709 of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) may not be

added to unadjusted income of a resident or nonresident estate or trust if, as annually determined by the commission:

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

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

(i) the entity; or

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

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

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

(i) the income is derived from a deceased Ute tribal member; and

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

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

(i) may not:

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

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(c); or

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

(ii) shall:

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

(B) be in writing;

(C) be signed by:

(I) the governor; and

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

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

(E) state the effective date of the agreement.

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

in effect.

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

(d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

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

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

Section 12. Section 59-10-1017 is amended to read:

59-10-1017. Utah Educational Savings Plan tax credit.

(1) As used in this section:

(a) "Account owner" means the same as that term is defined in Section 53B-8a-102.

(b) "Grantor trust" means the same as that term is defined in Section [~~53B-8a-102~~] 53B-8a-102.5.

(c) "Higher education costs" means the same as that term is defined in Section [~~53B-8a-102~~] 53B-8a-102.5.

(d) "Maximum amount of a qualified investment for the taxable year" means, for a taxable year, the product of 5% and:

(i) subject to Subsection (1)(d)(iii), for a claimant, estate, or trust that is an account owner, if that claimant, estate, or trust is other than husband and wife account owners who file a single return jointly, the maximum amount of a qualified investment:

(A) listed in Subsection 53B-8a-106(1)(e)(ii); and

(B) increased or kept for that taxable year in accordance with Subsections 53B-8a-106(1)(f) and (g);

(ii) subject to Subsection (1)(d)(iii), for claimants who are husband and wife account owners who file a single return jointly, the maximum amount of a qualified investment:

(A) listed in Subsection 53B-8a-106(1)(e)(iii); and

(B) increased or kept for that taxable year in accordance with Subsections 53B-8a-106(1)(f) and (g); or

(iii) for a grantor trust:

(A) if the owner of the grantor trust has a single filing status or head of household filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(d)(i); or

(B) if the owner of the grantor trust has a joint filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(d)(ii).

(e) "Owner of the grantor trust" means the same as that term is defined in Section 53B-8a-102.

(f) "Qualified investment" means the same as that term is defined in Section 53B-8a-102.

(2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of this section, a claimant, estate, or trust that is an account owner may claim a nonrefundable tax credit equal to the product of:

(a) the amount of a qualified investment made:

(i) during the taxable year; and

(ii) into an account owned by the claimant, estate, or trust; and

(b) 5%.

(3) A claimant, estate, or trust, or a person other than the claimant, estate, or trust, may make a qualified investment described in Subsection (2).

(4) A claimant, estate, or trust that is an account owner may not claim a tax credit under this section ~~[may not be claimed]~~ with respect to any portion of a qualified investment described in Subsection (2) that a claimant, estate, trust, or person described in Subsection (3) deducts on a federal income tax return.

(5) A tax credit under this section may not exceed the maximum amount of a qualified investment for the taxable year.

(6) A claimant, estate, or trust that is an account owner may not carry forward or carry back the tax credit under this section ~~[may not be carried forward or carried back]~~.

(7) A claimant, estate, or trust may claim a tax credit under this section in addition to the tax credit described in Section 59-10-1017.1.

Section 13. Section 59-10-1017.1 is enacted to read:

59-10-1017.1. Student Prosperity Savings Program tax credit.

(1) As used in this section, "qualified donation" means an amount donated, in

accordance with Section [53B-8a-203](#), to the Student Prosperity Savings Program created in Section [53B-8a-202](#).

(2) A claimant, estate, or trust may claim a nonrefundable tax credit for a qualified donation.

(3) The tax credit equals the product of:

(a) the qualified donation; and

(b) 5%.

(4) A claimant, estate, or trust may not claim a tax credit under this section with respect to any portion of a qualified donation that a claimant, estate, or trust deducts on a federal income tax return.

(5) A claimant, estate, or trust may not carry forward or carry back the portion of the tax credit allowed by this section that exceeds the claimant's, estate's, or trust's tax liability for the taxable year in which the claimant, estate, or trust claims the tax credit.

(6) A claimant, estate, or trust may claim a tax credit under this section in addition to the tax credit described in Section [59-10-1017](#).

Section 14. **Appropriation.**

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To the Board of Regents

<u>From General Fund, One-time</u>	<u>\$40,000</u>
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Schedule of Programs:

<u>Administration</u>	<u>\$40,000</u>
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ITEM 2

To the Board of Regents

<u>From General Fund</u>	<u>\$10,000</u>
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Schedule of Programs:

<u>Administration</u>	<u>\$10,000</u>
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834 The Legislature intends that the Board of Regents use the appropriation under this
835 section to carry out the requirements described in Sections [53B-8a-202](#) through [53B-8a-204](#).

836 **Section 15. Effective date and retrospective operation.**

837 (1) Except as provided in Subsection (2), if approved by two-thirds of all the members
838 elected to each house, this bill takes effect upon approval by the governor, or the day following
839 the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's
840 signature, or in the case of a veto, the date of veto override.

841 (2) The amendments to Sections [59-7-105](#), [59-7-106](#), [59-10-114](#), [59-10-202](#), and
842 [59-10-1017](#) and the enactment of Section [59-10-1017.1](#) have retrospective operation for a
843 taxable year beginning on or after January 1, 2017.

Legislative Review Note
Office of Legislative Research and General Counsel