

Representative Jeremy A. Peterson proposes the following substitute bill:

STUDENT PROSPERITY SAVINGS PROGRAM - TAX AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jeremy A. Peterson

Senate Sponsor: Deidre M. Henderson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- defines terms;
- creates the Student Prosperity Savings Program;
- provides a method for donating to the Student Prosperity Savings Program and obtaining proof of the donation;
- provides a process for certain high school students to obtain tax-advantaged college savings accounts;
- permits a corporation to subtract a donation to the Student Prosperity Savings Program from unadjusted income;
- creates an individual tax credit for a donation to the Student Prosperity Savings Program; and
- makes technical changes.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2018:



1st Sub. H.B. 24

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

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 This bill provides retrospective operation.

33 **Utah Code Sections Affected:**

34 AMENDS:

- 35 **53B-8a-102**, as last amended by Laws of Utah 2015, Chapter 94
- 36 **59-7-105**, as last amended by Laws of Utah 2015, Chapter 30
- 37 **59-7-106**, as last amended by Laws of Utah 2015, Chapters 30 and 94
- 38 **59-10-114**, as last amended by Laws of Utah 2016, Chapter 263
- 39 **59-10-202**, as last amended by Laws of Utah 2010, Chapter 6
- 40 **59-10-1017**, as last amended by Laws of Utah 2015, Chapter 94

41 ENACTS:

- 42 **53B-8a-102.5**, Utah Code Annotated 1953
- 43 **53B-8a-201**, Utah Code Annotated 1953
- 44 **53B-8a-202**, Utah Code Annotated 1953
- 45 **53B-8a-203**, Utah Code Annotated 1953
- 46 **53B-8a-204**, Utah Code Annotated 1953
- 47 **53B-8a-205**, Utah Code Annotated 1953
- 48 **59-10-1017.1**, Utah Code Annotated 1953



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

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

52 **Part 1. Utah Educational Savings Plan**

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

54 As used in this chapter:

- 55 (1) "Account agreement" means an agreement between an account owner and the Utah
- 56 Educational Savings Plan entered into under this chapter.

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

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

62 [~~(4)~~ (3) "Beneficiary" means the individual designated in an account agreement to
63 benefit from the amount saved for higher education costs.

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

67 [~~(6)~~ "Endowment fund" means the endowment fund established under Section
68 [53B-8a-107](#) which is held as a separate fund within the Utah Educational Savings Plan.]

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

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

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

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

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

80 [~~(12)~~ (4) "Plan" means the Utah Educational Savings Plan created in Section
81 [53B-8a-103](#).

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

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

86 [~~(15)~~ "Tuition and fees" means the quarterly or semester charges imposed to attend an
87 institution of higher education and required as a condition of enrollment.]

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

89 **53B-8a-102.5. Definitions for part.**

90 As used in this part:

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

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

97 (3) "Endowment fund" means the endowment fund established under Section
98 53B-8a-107, which is held as a separate fund within the Utah Educational Savings Plan.

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

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

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

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

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

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

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

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

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

117 **Part 2. Student Prosperity Savings Program**

118 **53B-8a-201. Definitions.**

119 As used in this part:

120 (1) "529 savings account" means a tax-advantaged method of saving for higher
121 education costs on behalf of a particular individual that:

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

123 (b) is managed by the plan.

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

125 (3) "Community partner" means a nonprofit organization that provide services to a
126 child who is economically disadvantaged or a family member, legal guardian, or legal
127 custodian of a child who is economically disadvantaged.

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

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

132 (a) experiencing intergenerational poverty;

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

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

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

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

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

140 (c) is economically disadvantaged; and

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

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

146 (8) "Higher education costs" means the same as that term is defined in Section
147 53B-8a-102.5, except that the expenses must be incurred at:

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

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

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

153 (9) "Intergenerational poverty" means the same as that term is defined in Section
154 [35A-9-102](#).

155 (10) "Program" means the Student Prosperity Savings Program created in Section
156 [53B-8a-202](#).

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

158 **53B-8a-202. Student Prosperity Savings Program.**

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

160 (2) The program is funded by:

161 (a) appropriations from the Legislature; and

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

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

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

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

167 **53B-8a-203. Donations to the program.**

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

169 (i) sending the donation to the plan; and

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

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

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

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

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

176 (ii) the amount of the donation; and

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

178 (c) The date on which the person makes a donation to the program is the date on which
179 the plan receives the donation, unless the plan receives the donation on a Saturday, a Sunday,
180 or a holiday, in which case the date on which the person makes the donation shall be the first

181 business day after the day on which the plan receives the donation.

182 (d) A person that receives a receipt described in Subsection (2)(a) shall retain the
183 receipt for the same time period a person is required to keep books and records under Section
184 59-1-1406.

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

186 **53B-8a-204. Distribution of program money -- Application process --**
187 **Prioritization -- Account agreements.**

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

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

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

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

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

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

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

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

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

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

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

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

210 (3) If the plan approves a community partner's application for an allocation of program
211 money, the plan may not promise or otherwise encumber the allocation to any other person

212 unless the allocation is forfeited under Subsection (5)(b)(ii).

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

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

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

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

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

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

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

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

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

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

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

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

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

240 **53B-8a-205. Application of other provisions of this chapter.**

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

242 [53B-8a-109](#)(3), govern the 529 savings accounts established under the Student Prosperity

243 Savings Program.244 Section 8. Section **59-7-105** is amended to read:245 **59-7-105. Additions to unadjusted income.**246 In computing adjusted income the following amounts shall be added to unadjusted
247 income:248 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state
249 of the United States, including any agency and instrumentality of a state of the United States;250 (2) the amount of any deduction taken on a corporation's federal return for taxes paid
251 by a corporation:

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

253 (b) to another state of the United States, a foreign country, a United States possession,
254 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or
255 exercising its corporate franchise, including income, franchise, corporate stock and business
256 and occupation taxes;257 (3) the safe harbor lease adjustment required under Subsections **59-7-111(1)(a)** and
258 **(2)(a)**;

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

260 (5) any deduction on the federal return that has been previously deducted on the Utah
261 return;262 (6) charitable contributions, to the extent deducted on the federal return when
263 determining federal taxable income;264 (7) the amount of gain or loss determined under Section **59-7-114** relating to a target
265 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already
266 been included in the unadjusted income of the target corporation;267 (8) the amount of gain or loss determined under Section **59-7-115** relating to
268 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
269 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
270 income of the target corporation;271 (9) adjustments to gains, losses, depreciation expense, amortization expense, and
272 similar items due to a difference between basis for federal purposes and basis as computed
273 under Section **59-7-107**;

274 (10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings
275 Plan, from the account of a corporation that is an account owner as defined in Section
276 [53B-8a-102](#), for the taxable year for which the amount is withdrawn, if that amount withdrawn
277 from the account of the corporation that is the account owner:

278 (a) is not expended for:

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

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

283 (b) is subtracted by the corporation:

284 (i) that is the account owner; and

285 (ii) in accordance with Subsection [59-7-106](#) (1)(r); and

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

290 Section 9. Section [59-7-106](#) is amended to read:

291 **[59-7-106](#). Subtractions from unadjusted income.**

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

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

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

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

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

304 (e) the decrease in qualified clinical testing expense deduction for federal income tax

305 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for
306 rare diseases or conditions under Section 45C, Internal Revenue Code;

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

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

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

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

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

317 (A) doing business; or

318 (B) exercising a corporate franchise;

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

320 (A) Utah;

321 (B) another state of the United States;

322 (C) a foreign country;

323 (D) a United States possession; or

324 (E) the Commonwealth of Puerto Rico; and

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

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

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

330 (i) is a member of the unitary group;

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

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

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

335 (m) the amount of gain or loss that is included in unadjusted income but not recognized

336 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
337 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
338 with Section 338(h)(10), Internal Revenue Code;

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

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

345 (i) an amortization expense;

346 (ii) a depreciation expense;

347 (iii) a gain;

348 (iv) a loss; or

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

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

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

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

355 (ii) under common ownership;

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

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

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

364 (iii) to the extent the qualified investment does not exceed the maximum amount of the
365 qualified investment that may be subtracted from unadjusted income for a taxable year in
366 accordance with Subsection 53B-8a-106(1);

367 (s) for a corporation that makes a donation, as that term is defined in Section
368 53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the
369 amount of the donation to the extent that the corporation did not deduct the donation on a
370 federal income tax return;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

394 (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in
395 determining income apportionable to this state, a portion of the factors of a foreign subsidiary
396 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the
397 combined report factors as provided in this Subsection (3)(c).

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

402 (A) not to exceed 100%; and

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

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

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

409 (i) if the taxpayer elects to file a worldwide combined report as provided in Section
410 [59-7-403](#); or

411 (ii) for the following:

412 (A) income generated from intangible property; or

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

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

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

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

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

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

426 (i) income generated from intangible property; or

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

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

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

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

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

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

438 **59-10-114. Additions to and subtractions from adjusted gross income of an**
439 **individual.**

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

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

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

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

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

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

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

454 (B) the withdrawal is subject to Subsections [31A-32a-105\(1\)](#) and (2); and

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

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

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

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

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

466 (i) is not expended for:

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

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

471 (ii) is:

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

473 (I) who is the account owner; and

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

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

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

481 (i) a state other than this state;

482 (ii) the District of Columbia;

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

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

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

489 (g) any distribution received by a resident beneficiary of a nonresident trust of
490 undistributed distributable net income realized by the trust on or after January 1, 2004, if that

491 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
492 was not taxed at the trust level by any state, with undistributed distributable net income
493 considered to be distributed from the most recently accumulated undistributed distributable net
494 income; and

495 (h) any adoption expense:

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

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

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

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

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

505 (a) the difference between:

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

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

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

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

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

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

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

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

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

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

- 553 (ii) shall:
- 554 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
- 555 (B) be in writing;
- 556 (C) be signed by:
- 557 (I) the governor; and
- 558 (II) the chair of the Business Committee of the Ute tribe;
- 559 (D) be conditioned on obtaining any approval required by federal law; and
- 560 (E) state the effective date of the agreement.

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

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

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

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

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

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

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

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

580 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
581 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
582 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
583 taxes the information contained on 2000 Form 8814 is reported on a form other than Form

584 8814.

585 (b) The amount of a child's income added to adjusted gross income under Subsection

586 (1)(b) is equal to the difference between:

587 (i) the lesser of:

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

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

590 (I) the child's taxable interest;

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

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

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

594 (5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences

595 of indebtedness issued by an entity described in Subsections (1)(e)(i) through (iv) may not be

596 added to adjusted gross income of a resident or nonresident individual if, as annually

597 determined by the commission:

598 (a) for an entity described in Subsection (1)(e)(i) or (ii), the entity and all of the

599 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on

600 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

601 (b) for an entity described in Subsection (1)(e)(iii) or (iv), the following do not impose

602 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of

603 this state:

604 (i) the entity; or

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

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

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

608 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**
609 **nonresident estate or trust.**

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

612 (a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal

613 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in

614 determining adjusted gross income;

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

618 (i) a state other than this state;

619 (ii) the District of Columbia;

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

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

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

625 (i) in an S corporation; and

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

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

632 (i) is not expended for:

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

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

637 (ii) is:

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

639 (I) that is the account owner; and

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

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

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

645 (2) There shall be subtracted from unadjusted income of a resident or nonresident

646 estate or trust:

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

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

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

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

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

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

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

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

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

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

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

676 (d) any amount:

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

708 determined by the commission:

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

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

715 (i) the entity; or

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

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

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

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

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

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

723 (i) may not:

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

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

726 subtraction described in Subsection (2)(c); or

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

728 (ii) shall:

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

730 (B) be in writing;

731 (C) be signed by:

732 (I) the governor; and

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

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

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

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

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

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

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

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

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

749 **59-10-1017. Utah Educational Savings Plan tax credit.**

750 (1) As used in this section:

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

752 (b) "Grantor trust" means the same as that term is defined in Section [[53B-8a-102](#)]
753 [53B-8a-102.5](#).

754 (c) "Higher education costs" means the same as that term is defined in Section
755 [[53B-8a-102](#)] [53B-8a-102.5](#).

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

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

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

762 (B) increased or kept for that taxable year in accordance with Subsections
763 [53B-8a-106](#)(1)(f) and (g);

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

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

767 (B) increased or kept for that taxable year in accordance with Subsections
768 [53B-8a-106](#)(1)(f) and (g); or

769 (iii) for a grantor trust:

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

772 (B) if the owner of the grantor trust has a joint filing status as defined in Section
773 59-10-1018, the amount described in Subsection (1)(d)(ii).

774 (e) "Owner of the grantor trust" means the same as that term is defined in Section
775 ~~[53B-8a-102]~~ 53B-8a-102.5.

776 (f) "Qualified investment" means the same as that term is defined in Section
777 ~~[53B-8a-102]~~ 53B-8a-102.5.

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

781 (a) the amount of a qualified investment made:

782 (i) during the taxable year; and

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

784 (b) 5%.

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

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

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

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

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

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

798 **59-10-1017.1. Student Prosperity Savings Program tax credit.**

799 (1) As used in this section, "qualified donation" means an amount donated, in
800 accordance with Section 53B-8a-203, to the Student Prosperity Savings Program created in

801 Section 53B-8a-202.

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

804 (3) The tax credit equals the product of:

805 (a) the qualified donation; and

806 (b) 5%.

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

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

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

815 **Section 14. Appropriation.**

816 The following sums of money are appropriated for the fiscal year beginning July 1,
817 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for
818 fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
819 Act, the Legislature appropriates the following sums of money from the funds or accounts
820 indicated for the use and support of the government of the state of Utah.

821 ITEM 1

822 To the Board of Regents

823 From General Fund, One-time \$40,000

824 Schedule of Programs:

825 Administration \$40,000

826 ITEM 2

827 To the Board of Regents

828 From General Fund \$10,000

829 Schedule of Programs:

830 Administration \$10,000

831 The Legislature intends that the Board of Regents use the appropriation under this

832 section to carry out the requirements described in Sections [53B-8a-202](#) through [53B-8a-204](#).

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

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

838 (2) The amendments to Sections [59-7-105](#), [59-7-106](#), [59-10-114](#), [59-10-202](#), and
839 [59-10-1017](#) and the enactment of Section [59-10-1017.1](#) have retrospective operation for a
840 taxable year beginning on or after January 1, 2017.