

1 **INCOME TAX AMENDMENTS**

2 2006 FOURTH SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Wayne A. Harper

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Individual Income Tax Act relating to tax brackets, additions, and
10 subtractions, and enacts of the Single Rate Individual Income Tax Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies tax brackets for taxable years beginning on or after January 1, 2006;
- 14 ▶ modifies additions to and subtractions from federal taxable income for purposes of
15 calculating individual income taxes;
- 16 ▶ enacts the Single Rate Individual Income Tax Act:
 - 17 • for taxable years beginning on or after January 1, 2007; and
 - 18 • that allows a resident or nonresident individual to determine each time the
19 resident or nonresident individual files a state individual income tax return or
20 amended return, whether to calculate and pay a single rate individual income tax
21 on the basis of adjusted gross income or pay a multi-rate individual income tax
22 on the basis of federal taxable income;
- 23 ▶ enacts, modifies, and repeals definitions;
- 24 ▶ repeals the authority for the State Tax Commission to prescribe tax tables and for an
25 individual to elect to pay an individual income tax on the basis of those tax tables;
- 26 ▶ repeals an intent statement relating to the Individual Income Tax Act;
- 27 ▶ grants rulemaking authority to the State Tax Commission; and

28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides an effective date and provides for retrospective operation.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **59-10-103**, as last amended by Chapters 223 and 224, Laws of Utah 2006

36 **59-10-104**, as last amended by Chapters 323 and 324, Laws of Utah 2001

37 **59-10-104.1**, as enacted by Chapter 323, Laws of Utah 2001

38 **59-10-114**, as last amended by Chapters 223 and 224, Laws of Utah 2006

39 **59-10-115**, as last amended by Chapter 223, Laws of Utah 2006

40 **59-10-116**, as last amended by Chapter 79, Laws of Utah 2004

41 **59-10-117**, as last amended by Chapters 311 and 345, Laws of Utah 1995

42 **59-10-202**, as last amended by Chapter 223, Laws of Utah 2006

43 **59-10-303**, as renumbered and amended by Chapter 2, Laws of Utah 1987

44 **59-10-1002**, as enacted by Chapter 223, Laws of Utah 2006

45 **59-10-1005**, as renumbered and amended by Chapter 223, Laws of Utah 2006

46 ENACTS:

47 **59-10-1201**, Utah Code Annotated 1953

48 **59-10-1202**, Utah Code Annotated 1953

49 **59-10-1203**, Utah Code Annotated 1953

50 **59-10-1204**, Utah Code Annotated 1953

51 **59-10-1205**, Utah Code Annotated 1953

52 **59-10-1206**, Utah Code Annotated 1953

53 **59-10-1207**, Utah Code Annotated 1953

54 REPEALS:

55 **59-10-102**, as renumbered and amended by Chapter 2, Laws of Utah 1987

56 **59-10-105**, as last amended by Chapter 323, Laws of Utah 2001

57 **59-10-111**, as last amended by Chapter 96, Laws of Utah 1987

58 **59-10-112**, as last amended by Chapter 223, Laws of Utah 2006

SB4001

59

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

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

62 **59-10-103. Definitions.**

63 (1) As used in this chapter:

64 (a) "Adjusted gross income":

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

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

69 [~~(a)~~] (b) "Adoption expenses" means:

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

72 (ii) any welfare agency fees or costs;

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

74 (iv) any legal fees or costs; or

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

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

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

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

80 (iii) is not enrolled in:

81 (A) an education program for students with disabilities that is authorized under Section
82 53A-15-301; or

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

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

85 means a transaction that results in a:

86 (A) short-term capital gain; or

87 (B) long-term capital gain.

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

90 ~~[(d)]~~ (e) "Commercial domicile" means the principal place from which the trade or
91 business of a Utah small business corporation is directed or managed.

92 ~~[(e)]~~ (f) "Corporation" includes:

- 93 (i) associations;
- 94 (ii) joint stock companies; and
- 95 (iii) insurance companies.

96 ~~[(f)]~~ (g) "Dependent child with a disability" means an individual 21 years of age or
97 younger who:

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

- 100 (I) autism;
- 101 (II) deafness;
- 102 (III) preschool developmental delay;
- 103 (IV) dual sensory impairment;
- 104 (V) hearing impairment;
- 105 (VI) intellectual disability;
- 106 (VII) multidisability;
- 107 (VIII) orthopedic impairment;
- 108 (IX) other health impairment;
- 109 (X) traumatic brain injury; or
- 110 (XI) visual impairment;

111 (B) is not receiving residential services from:

- 112 (I) the Division of Services for People with Disabilities created under Section
113 62A-5-102; or
- 114 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
- 115 and

116 (C) is enrolled in:

- 117 (I) an education program for students with disabilities that is authorized under Section
118 53A-15-301; or
- 119 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

120 or

121 (ii) is identified under guidelines of the Department of Health as qualified for:
122 (A) Early Intervention; or
123 (B) Infant Development Services.

124 ~~(g)~~ (h) "Distributable net income" is as defined in Section 643, Internal Revenue
125 Code.

126 ~~(h)~~ (i) "Employee" is as defined in Section 59-10-401.
127 ~~(i)~~ (j) "Employer" is as defined in Section 59-10-401.

128 (k) "Federal taxable income":
129 (i) for a resident or nonresident individual, means taxable income as defined by Section
130 63, Internal Revenue Code; or
131 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
132 (b), Internal Revenue Code.

133 ~~(j)~~ (l) "Fiduciary" means:
134 (i) a guardian;
135 (ii) a trustee;
136 (iii) an executor;
137 (iv) an administrator;
138 (v) a receiver;
139 (vi) a conservator; or
140 (vii) any person acting in any fiduciary capacity for any individual.

141 ~~(k)~~ (m) "Homesteaded land diminished from the Uintah and Ouray Reservation"
142 means the homesteaded land that was held to have been diminished from the Uintah and Ouray
143 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

144 ~~(l)~~ (n) "Individual" means a natural person and includes aliens and minors.

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

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

151 ~~(o)~~ (q) "Nonresident individual" means an individual who is not a resident of this

152 state.

153 ~~[(p)]~~ (r) "Nonresident trust" or "nonresident estate" means a trust or estate which is not
154 a resident estate or trust.

155 ~~[(q)]~~ (s) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
156 unincorporated organization:

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

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

160 (I) a trust;

161 (II) an estate; or

162 (III) a corporation.

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

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

167 ~~[(r)]~~ (t) "Qualifying military service member" means a member of:

168 (i) The Utah Army National Guard;

169 (ii) The Utah Air National Guard; or

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

171 (A) The Army Reserve;

172 (B) The Naval Reserve;

173 (C) The Air Force Reserve;

174 (D) The Marine Corps Reserve; or

175 (E) The Coast Guard Reserve.

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

177 (i) (A) common; or

178 (B) preferred;

179 (ii) as defined by the commission by rule, originally issued to:

180 (A) a resident or nonresident individual; or

181 (B) a partnership if the resident or nonresident individual making a subtraction from
182 federal taxable income in accordance with Subsection 59-10-114(2)(1):

183 (I) was a partner when the stock was issued; and
184 (II) remains a partner until the last day of the taxable year for which the resident or
185 nonresident individual makes the subtraction from federal taxable income in accordance with
186 Subsection 59-10-114(2)(l); and
187 (iii) issued:
188 (A) by a Utah small business corporation;
189 (B) on or after January 1, 2003; and
190 (C) for:
191 (I) money; or
192 (II) other property, except for stock or securities.
193 ~~(t)~~ (v) (i) "Resident individual" means:
194 (A) an individual who is domiciled in this state for any period of time during the
195 taxable year, but only for the duration of the period during which the individual is domiciled in
196 this state; or
197 (B) an individual who is not domiciled in this state but:
198 (I) maintains a permanent place of abode in this state; and
199 (II) spends in the aggregate 183 or more days of the taxable year in this state.
200 (ii) For purposes of Subsection (1)~~(t)~~ (v)(i)(B), a fraction of a calendar day shall be
201 counted as a whole day.
202 ~~(t)~~ (w) "Resident estate" or "resident trust" is as defined in Section 75-7-103.
203 ~~(v)~~ (x) For purposes of Subsection 59-10-114(2)(l), "short-term capital gain" is as
204 defined in Section 1222, Internal Revenue Code.
205 ~~(w)~~ (y) "Taxable income" ~~and~~ or "state taxable income" ~~are defined as provided in~~
206 ~~Sections 59-10-111, 59-10-112, 59-10-201.1, and 59-10-204.];~~
207 (i) subject to Subsection 59-10-302(2), for a resident individual other than a resident
208 individual described in Subsection (1)(y)(iii), means the resident individual's federal taxable
209 income after making the:
210 (A) additions and subtractions required by Section 59-10-114; and
211 (B) adjustments required by Section 59-10-115;
212 (ii) for a nonresident individual other than a nonresident individual described in
213 Subsection (1)(y)(iii), is as defined in Section 59-10-116;

214 (iii) for a resident or nonresident individual that collects and pays a tax described in
215 Part 12, Single Rate Individual Income Tax Act, is as defined in Section 59-10-1202;
216 (iv) for a resident estate or trust, is as calculated under Section 59-10-201.1; and
217 (v) for a nonresident estate or trust, is as calculated under Section 59-10-204.
218 ~~(x)~~ (z) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or
219 trust, whose income is subject in whole or part to the tax imposed by this chapter.
220 ~~(y)~~ (aa) "Uintah and Ouray Reservation" means the lands recognized as being
221 included within the Uintah and Ouray Reservation in:
222 (i) Hagen v. Utah, 510 U.S. 399 (1994); and
223 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).
224 ~~(z)~~ (bb) (i) "Utah small business corporation" means a corporation that:
225 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue
226 Code;
227 (B) except as provided in Subsection (1)~~(z)~~(bb)(ii), meets the requirements of Section
228 1244(c)(1)(C), Internal Revenue Code; and
229 (C) has its commercial domicile in this state.
230 (ii) Notwithstanding Subsection (1)~~(z)~~(bb)(i)(B), the time period described in Section
231 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a
232 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the
233 resident or nonresident individual makes a subtraction from federal taxable income in
234 accordance with Subsection 59-10-114(2)(1).
235 ~~(aa)~~ (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute
236 Indian Tribe of the Uintah and Ouray Reservation.
237 ~~(bb)~~ (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray
238 Reservation.
239 ~~(cc)~~ (ee) "Wages" is as defined in Section 59-10-401.
240 (2) (a) Any term used in this chapter has the same meaning as when used in
241 comparable context in the laws of the United States relating to federal income taxes unless a
242 different meaning is clearly required.
243 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
244 mean the Internal Revenue Code or other provisions of the laws of the United States relating to

245 federal income taxes that are in effect for the taxable year.

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

250 Section 2. Section **59-10-104** is amended to read:

251 **59-10-104. Tax basis -- Rates -- Exemption.**

252 (1) Except as provided in Subsection (4) or Part 12, Single Rate Individual Income Tax
253 Act, for taxable years beginning on or after January 1, [~~2001~~] 2006, a tax is imposed on the
254 state taxable income[, as defined in Section 59-10-112,] of every resident individual as
255 provided in this section.

256 (2) For an individual, other than a husband and wife or head of household required to
257 use the tax table under Subsection (3), the tax under this section is imposed in accordance with
258 the following table:

259 If the state taxable income is:	The tax is:
260 Less than or equal to [\$863] <u>\$1,105</u>	2.3% of the state taxable income
261 Greater than [\$863] <u>\$1,105</u> but less than	[\$20] <u>\$25</u> , plus 3.3% of state taxable
262 or equal to [\$1,726] <u>\$2,208</u>	income greater than [\$863] <u>\$1,105</u>
263 Greater than [\$1,726] <u>\$2,208</u> but less than	[\$48] <u>\$62</u> , plus 4.2% of state taxable
264 or equal to [\$2,588] <u>\$3,313</u>	income greater than [\$1,726] <u>\$2,208</u>
265 Greater than [\$2,588] <u>\$3,313</u> but less than	[\$85] <u>\$108</u> , plus 5.2% of state taxable
266 or equal to [\$3,450] <u>\$4,416</u>	income greater than [\$2,588] <u>\$3,313</u>
267 Greater than [\$3,450] <u>\$4,416</u> but less than	[\$129] <u>\$166</u> , plus 6% of state taxable
268 or equal to [\$4,313] <u>\$5,521</u>	income greater than [\$3,450] <u>\$4,416</u>
269 Greater than [\$4,313] <u>\$5,521</u>	[\$181] <u>\$232</u> , plus 7% of state taxable
270	income greater than [\$4,313] <u>\$5,521</u>

271 (3) For a husband and wife filing a single return jointly, or a head of household as
272 defined in Section 2(b), Internal Revenue Code, filing a single return, the tax under this section
273 is imposed in accordance with the following table:

274 If the state taxable income is:	The tax is:
275 Less than or equal to [\$1,726] <u>\$2,210</u>	2.3% of the state taxable income

276 Greater than [~~\$1,726~~] \$2,210 but less than [~~\$40~~] \$51, plus 3.3% of state taxable
 277 or equal to [~~\$3,450~~] \$4,416 income greater than [~~\$1,726~~] \$2,210
 278 Greater than [~~\$3,450~~] \$4,416 but less than [~~\$97~~] \$124, plus 4.2% of state taxable
 279 or equal to [~~\$5,176~~] \$6,626 income greater than [~~\$3,450~~] \$4,416
 280 Greater than [~~\$5,176~~] \$6,626 but less than [~~\$169~~] \$216, plus 5.2% of state taxable
 281 or equal to [~~\$6,900~~] \$8,832 income greater than [~~\$5,176~~] \$6,626
 282 Greater than [~~\$6,900~~] \$8,832 but less than [~~\$259~~] \$331, plus 6% of state taxable
 283 or equal to [~~\$8,626~~] \$11,042 income greater than [~~\$6,900~~] \$8,832
 284 Greater than [~~\$8,626~~] \$11,042 [~~\$362~~] \$464, plus 7% of state taxable
 285 income greater than [~~\$8,626~~] \$11,042

286 (4) This section does not apply to a resident individual exempt from taxation under
 287 Section 59-10-104.1.

288 Section 3. Section **59-10-104.1** is amended to read:

289 **59-10-104.1. Exemption from taxation.**

290 (1) For purposes of this section:

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

- 293 (i) the individual;
- 294 (ii) the individual's spouse; and
- 295 (iii) the individual's dependents[~~; and~~].

296 (b) "Standard deduction":

297 (i) except as provided in Subsection (1)(b)(ii), means the standard deduction an
 298 individual is allowed to claim for the taxable year under Section 63, Internal Revenue Code;
 299 and

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

- 303 (A) blind; or
- 304 (B) 65 years of age or older.

305 (2) For taxable years beginning on or after January 1, 2002, an individual is exempt
 306 from a tax imposed by Section 59-10-104[~~, 59-10-105,~~] or 59-10-116 or described in Section

307 59-10-1203 if the individual's adjusted gross income on the individual's federal individual
308 income tax return for the taxable year is less than or equal to the sum of the individual's:

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

311 Section 4. Section **59-10-114** is amended to read:

312 **59-10-114. Additions to and subtractions from federal taxable income of an**
313 **individual.**

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

316 (a) the amount of any income tax imposed by this or any predecessor Utah individual
317 income tax law and the amount of any income tax imposed by the laws of another state, the
318 District of Columbia, or a possession of the United States, to the extent deducted from [~~federal~~]
319 adjusted gross income[~~, as defined by Section 62, Internal Revenue Code,~~] in determining
320 federal taxable income;

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

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

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

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

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

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

333 (i) the [~~taxpayer~~] resident or nonresident individual did not deduct or include the
334 amounts on the [~~taxpayer's~~] resident or nonresident individual's federal individual income tax
335 return pursuant to Section 220, Internal Revenue Code; [~~and~~]

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

337 (iii) the withdrawal is deducted by the resident or nonresident individual under

338 Subsection (2)(h):

339 (f) the amount disbursed to an account owner under Title 53B, Chapter 8a, Higher
340 Education Savings Incentive Program, ~~[it]~~ for the taxable year [it] for which the amount is
341 disbursed~~;~~, if that amount disbursed to the account owner:

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

343 (ii) is deducted by the account owner under Subsection (2)(i);

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

348 (i) a state other than this state;

349 (ii) the District of Columbia;

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

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

353 (h) subject to Subsection (2)(n), any distribution received by a resident beneficiary of a
354 resident trust of income that was taxed at the trust level for federal tax purposes, but was
355 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(c);

356 (i) any distribution received by a resident beneficiary of a nonresident trust of
357 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
358 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
359 was not taxed at the trust level by any state, with undistributed distributable net income
360 considered to be distributed from the most recently accumulated undistributed distributable net
361 income; and

362 (j) any adoption expense:

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

365 (ii) to the extent to which the resident or nonresident individual deducts that adoption
366 expense;

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

368 (B) from federal taxable income on a ~~[state or]~~ federal individual income tax return.

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

371 (a) the interest or a dividend on obligations or securities of the United States and its
372 possessions or of any authority, commission, or instrumentality of the United States, to the
373 extent that interest or dividend is included in gross income for federal income tax purposes for
374 the taxable year but exempt from state income taxes under the laws of the United States, but
375 the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on
376 indebtedness incurred or continued to purchase or carry the obligations or securities described
377 in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend
378 income described in this Subsection (2)(a) to the extent that such expenses, including
379 amortizable bond premiums, are deductible in determining federal taxable income;

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

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

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

387 (A) paid; or

388 (B) incurred;

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

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

392 (d) amounts received by taxpayers under age 65 as retirement income which, for
393 purposes of this section, means pensions and annuities, paid from an annuity contract
394 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),
395 Internal Revenue Code, or purchased by an employee under a plan which meets the
396 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or
397 political subdivision thereof, or the District of Columbia, to the employee involved or the
398 surviving spouse;

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

400 personal retirement exemption;

401 (f) 75% of the amount of the personal exemption, as defined and calculated in the
402 Internal Revenue Code, for each dependent child with a disability and adult with a disability
403 who is claimed as a dependent on a taxpayer's return;

404 (g) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the
405 taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

406 (i) for:

407 (A) the taxpayer;

408 (B) the taxpayer's spouse; and

409 (C) the taxpayer's dependents; and

410 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
411 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

412 (h) (i) except as provided in this Subsection (2)(h), the amount of a contribution made
413 during the taxable year on behalf of the taxpayer to a medical care savings account and interest
414 earned on a contribution to a medical care savings account established pursuant to Title 31A,
415 Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by
416 the account administrator as provided in the Medical Care Savings Account Act, and if the
417 taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax
418 return pursuant to Section 220, Internal Revenue Code; and

419 (ii) a contribution deductible under this Subsection (2)(h) may not exceed either of the
420 following:

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

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

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

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

429 (i) the amount included in federal taxable income that was derived from money paid by
430 an account owner to the program fund under Title 53B, Chapter 8a, Higher Education Savings

431 Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d), and
432 investment income earned on account agreements entered into under Section 53B-8a-106 that
433 is included in federal taxable income, but only when the funds are used for qualified higher
434 education costs of the beneficiary;

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

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

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

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

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

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

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

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

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

451 and

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

455 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
456 commission may make rules:

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

458 (B) for purposes of Subsection (2)(l)(i)(C), prescribing the circumstances under which
459 a resident or nonresident individual has an ownership interest in a Utah small business
460 corporation;

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

462 before December 31, 2005, the first \$2,200 of income a qualifying military service member
463 receives:

464 (i) for service:

465 (A) as a qualifying military service member; or

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

467 (ii) to the extent that income is included in adjusted gross income on that resident or
468 nonresident individual's federal individual income tax return for that taxable year;

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

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

472 (A) a state; or

473 (B) the District of Columbia; and

474 (ii) to the extent that amount or distribution is included in adjusted gross income for
475 that taxable year on the federal individual income tax return of the resident or nonresident
476 individual or resident or nonresident beneficiary of a resident trust;

477 (o) the amount of a railroad retirement benefit:

478 (i) paid:

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

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

482 (C) for the taxable year; and

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

486 (p) an amount:

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

488 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
489 part on that amount in accordance with:

490 (A) federal law;

491 (B) a treaty; or

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

493 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
494 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
495 \$4,800, except that:

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

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

502 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
503 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
504 reduced by 50 cents.

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

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

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

513 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
514 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

515 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be
516 calculated by adding to [federal] adjusted gross income any interest income not otherwise
517 included in [federal] adjusted gross income.

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

523 (e) For purposes of Subsection (2)(g), a subtraction for an amount paid for health care

524 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

525 (i) for an amount that is reimbursed or funded in whole or in part by the federal
526 government, the state, or an agency or instrumentality of the federal government or the state;
527 and

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

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

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

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

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

535 (i) may not:

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

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

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

540 (ii) shall:

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

542 (B) be in writing;

543 (C) be signed by:

544 (I) the governor; and

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

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

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

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

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

554 (d) For purposes of Subsection (2)(k) and in accordance with Title 63, Chapter 46a,

555 Utah Administrative Rulemaking Act, the commission may make rules:

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

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

560 (5) (a) For purposes of this Subsection (5), "Form 8814" means:

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

563 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
564 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
565 2000 Form 8814 if for purposes of federal individual income taxes the information contained
566 on 2000 Form 8814 is reported on a form other than Form 8814; and

567 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
568 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
569 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
570 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
571 8814.

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

574 (i) the lesser of:

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

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

577 (I) the child's taxable interest;

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

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

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

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

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

586 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
587 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

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

591 (i) the entity; or

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

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

594 Section 5. Section **59-10-115** is amended to read:

595 **59-10-115. Adjustments to federal taxable income.**

596 (1) The commission shall allow an adjustment to [state] federal taxable income of a
597 taxpayer if the taxpayer would otherwise:

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

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

600 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
601 commission may make rules to allow for the adjustment to [state] federal taxable income
602 required by Subsection (1).

603 Section 6. Section **59-10-116** is amended to read:

604 **59-10-116. Definitions -- Tax on nonresident individual -- Calculation --**
605 **Exemption.**

606 (1) For purposes of this section:

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

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

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

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

614 (ii) if the nonresident individual described in Subsection (1)(c)(i) is a servicemember,
615 the compensation the servicemember receives for military service if the servicemember is
616 serving in compliance with military orders[;and].

617 (d) "State taxable income" means a nonresident individual's federal taxable income
618 after making the:

619 (i) additions and subtractions required by Section 59-10-114; and

620 (ii) adjustments required by Section 59-10-115.

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

622 (i) difference between:

623 (A) a nonresident individual's ~~[federal taxable income, as defined in Section~~
624 ~~59-10-111, with the modifications, subtractions, and adjustments provided for in Section~~
625 ~~59-10-114]~~ state taxable income; and

626 (B) if the nonresident individual described in Subsection (1)~~[(d)]~~(e)(i)(A) is a
627 servicemember, compensation the servicemember receives for military service if the
628 servicemember is serving in compliance with military orders; and

629 (ii) tax rate imposed under Section 59-10-104.

630 (2) Except as provided in Subsection (3) or Part 12, Single Rate Individual Income Tax
631 Act, a tax is imposed on a nonresident individual in an amount equal to the product of the
632 nonresident individual's:

633 (a) unapportioned state tax; and

634 (b) state income tax percentage.

635 (3) This section does not apply to a nonresident individual exempt from taxation under
636 Section 59-10-104.1.

637 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for
638 purposes of Subsection (1), the commission may by rule define what constitutes compensation.

639 Section 7. Section **59-10-117** is amended to read:

640 **59-10-117. Adjusted gross income derived from Utah sources.**

641 (1) For ~~[the purpose]~~ purposes of Section 59-10-116, ~~[federal]~~ adjusted gross income
642 derived from Utah sources ~~[shall include]~~ includes those items includable in ~~[federal]~~ "adjusted
643 gross income" ~~(as defined by Section 62 of the Internal Revenue Code)~~ attributable to or
644 resulting from:

645 (a) the ownership in this state of any interest in real or tangible personal property,
646 ~~[including real property or property rights from which "gross income from mining," as~~
647 ~~defined by Section 613(c) [of the], Internal Revenue Code, is derived[;]]~~; or

- 648 (b) the carrying on of a business, trade, profession, or occupation in this state.
- 649 (2) For the purposes of Subsection (1):
- 650 (a) income from intangible personal property, including annuities, dividends, interest,
651 and gains from the disposition of intangible personal property shall constitute income derived
652 from Utah sources only to the extent that such income is from property employed in a trade,
653 business, profession, or occupation carried on in this state[-];
- 654 (b) deductions with respect to capital losses, net long-term capital gains, and net
655 operating losses shall be based solely on income, gain, loss, and deduction connected with Utah
656 sources, under rules prescribed by the commission in accordance with Title 63, Chapter 46a,
657 Utah Administrative Rulemaking Act, but otherwise shall be determined in the same manner as
658 the corresponding federal deductions[-];
- 659 (c) salaries, wages, commissions, and compensation for personal services rendered
660 outside this state shall not be considered to be derived from Utah sources[-];
- 661 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and
662 deduction derived from or connected with Utah sources shall be determined under Section
663 59-10-118[-];
- 664 (e) a nonresident, other than a dealer holding property primarily for sale to customers
665 in the ordinary course of [~~his~~] the dealer's trade or business, [~~shall~~] may not be considered to
666 carry on a trade, business, profession, or occupation in this state solely by reason of the
667 purchase or sale of property for [~~his~~] the nonresident's own account[-];
- 668 (f) if a trade, business, profession, or occupation is carried on partly within and partly
669 without this state, items of income, gain, loss, and deductions derived from or connected with
670 Utah sources shall be determined in accordance with the provisions of Section 59-10-118[-];
- 671 (g) a nonresident partner's distributive share of partnership income, gain, loss, and
672 deduction derived from or connected with Utah sources shall be determined under Section
673 59-10-303[-];
- 674 (h) the share of a nonresident estate or trust and nonresident beneficiaries of any estate
675 or trust in income, gain, loss, and deduction derived from or connected with Utah sources shall
676 be determined under Section 59-10-207[-]; and
- 677 (i) any dividend, interest, or distributive share of income, gain, or loss from a real
678 estate investment trust, as defined in Section 59-7-116.5, distributed or allocated to a

679 nonresident investor in the trust, including any shareholder, beneficiary, or owner of a
680 beneficial interest in the trust, shall be income from intangible personal property under
681 Subsection (2)(a), and shall constitute income derived from Utah sources only to the extent the
682 nonresident investor is employing its beneficial interest in the trust in a trade, business,
683 profession, or occupation carried on by the investor in this state.

684 Section 8. Section **59-10-202** is amended to read:

685 **59-10-202. Additions to and subtractions from federal taxable income of a**
686 **resident or nonresident estate or trust.**

687 (1) There shall be added to federal taxable income of a resident or nonresident estate or
688 trust:

689 (a) the amount of any income tax imposed by this or any predecessor Utah individual
690 income tax law and the amount of any income tax imposed by the laws of another state, the
691 District of Columbia, or a possession of the United States, to the extent deducted from federal
692 adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal
693 taxable income;

694 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3) of the
695 Internal Revenue Code, to the extent deductible under Section 62(a)(8) of the Internal Revenue
696 Code in determining [~~federal~~] adjusted gross income;

697 (c) except as provided in Subsection (3), for taxable years beginning on or after
698 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
699 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
700 one or more of the following entities:

701 (i) a state other than this state;

702 (ii) the District of Columbia;

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

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

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

708 (i) in an S corporation; and

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

710 (e) any fiduciary adjustments required by Section 59-10-210.
711 (2) There shall be subtracted from federal taxable income of a resident or nonresident
712 estate or trust:
713 (a) the interest or a dividend on obligations or securities of the United States and its
714 possessions or of any authority, commission, or instrumentality of the United States, to the
715 extent that interest or dividend is included in gross income for federal income tax purposes for
716 the taxable year but exempt from state income taxes under the laws of the United States, but
717 the amount subtracted under this Subsection (2) shall be reduced by any interest on
718 indebtedness incurred or continued to purchase or carry the obligations or securities described
719 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
720 income described in this Subsection (2) to the extent that such expenses, including amortizable
721 bond premiums, are deductible in determining federal taxable income;
722 (b) 1/2 of the net amount of any income tax paid or payable to the United States after
723 all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the
724 same taxable year;
725 (c) income of an irrevocable resident trust if:
726 (i) the income would not be treated as state taxable income derived from Utah sources
727 under Section 59-10-204 if received by a nonresident trust;
728 (ii) the trust first became a resident trust on or after January 1, 2004;
729 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
730 resident irrevocable trust created by the same settlor or the spouse of the same settlor;
731 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);
732 (v) the amount subtracted under this Subsection (2) is reduced to the extent the settlor
733 or any other person is treated as an owner of any portion of the trust under Subtitle A,
734 Subchapter J, Subpart E of the Internal Revenue Code; and
735 (vi) the amount subtracted under this Subsection (2) is reduced by any interest on
736 indebtedness incurred or continued to purchase or carry the assets generating the income
737 described in this Subsection (2), and by any expenses incurred in the production of income
738 described in this Subsection (2), to the extent that those expenses, including amortizable bond
739 premiums, are deductible in determining federal taxable income;
740 (d) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or

741 nonresident estate or trust derived from a deceased Ute tribal member:

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

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

745 (e) (i) for taxable years beginning on or after January 1, 2003, the total amount of a
746 resident or nonresident estate's or trust's short-term capital gain or long-term capital gain on a
747 capital gain transaction:

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

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

750 (I) to purchase qualifying stock in a Utah small business corporation; and
751 (II) within a 12-month period after the day on which the capital gain transaction occurs;

752 and

753 (C) if, prior to the purchase of the qualifying stock described in Subsection
754 (2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in
755 the Utah small business corporation that issued the qualifying stock; and

756 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
757 commission may make rules:

758 (A) defining the term "gross proceeds"; and
759 (B) for purposes of Subsection (2)(e)(i)(C), prescribing the circumstances under which
760 a resident or nonresident estate or trust has an ownership interest in a Utah small business
761 corporation;

762 (f) for the taxable year beginning on or after January 1, 2005, but beginning on or
763 before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or
764 trust that is derived from a deceased qualifying military service member:

765 (i) for service:

766 (A) as a qualifying military service member; or
767 (B) under an order into active service in accordance with Section 39-1-5; and

768 (ii) to the extent that income is included in total income on that resident or nonresident
769 estate's or trust's federal income tax return for estates and trusts for that taxable year;

770 (g) any amount:

771 (i) received by a resident or nonresident estate or trust;

772 (ii) that constitutes a refund of taxes imposed by:
773 (A) a state; or
774 (B) the District of Columbia; and
775 (iii) to the extent that amount is included in total income on that resident or nonresident
776 estate's or trust's federal tax return for estates and trusts for that taxable year;
777 (h) the amount of a railroad retirement benefit:
778 (i) paid:
779 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
780 seq.;

781 (B) to a resident or nonresident estate or trust derived from a deceased resident or
782 nonresident individual; and
783 (C) for the taxable year; and
784 (ii) to the extent that railroad retirement benefit is included in total income on that
785 resident or nonresident estate's or trust's federal tax return for estates and trusts;
786 (i) an amount:
787 (i) received by a resident or nonresident estate or trust if that amount is derived from a
788 deceased enrolled member of an American Indian tribe; and
789 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
790 part on that amount in accordance with:
791 (A) federal law;
792 (B) a treaty; or
793 (C) a final decision issued by a court of competent jurisdiction; and
794 (j) any fiduciary adjustments required by Section 59-10-210.

795 (3) Notwithstanding Subsection (1)(c), interest from bonds, notes, and other evidences
796 of indebtedness issued by an entity described in Subsections (1)(c)(i) through (iv) may not be
797 added to federal taxable income of a resident or nonresident estate or trust if, as annually
798 determined by the commission:
799 (a) for an entity described in Subsection (1)(c)(i) or (ii), the entity and all of the
800 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
801 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
802 (b) for an entity described in Subsection (1)(c)(iii) or (iv), the following do not impose

803 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
804 this state:

805 (i) the entity; or
806 (ii) (A) the state in which the entity is located; or
807 (B) the District of Columbia, if the entity is located within the District of Columbia.

808 (4) (a) A subtraction for an amount described in Subsection (2)(d) is allowed only if:
809 (i) the income is derived from a deceased Ute tribal member; and
810 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
811 requirements of this Subsection (4).

812 (b) The agreement described in Subsection (4)(a):
813 (i) may not:
814 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
815 (B) provide a subtraction under this section greater than or different from the
816 subtraction described in Subsection (2)(d); or
817 (C) affect the power of the state to establish rates of taxation; and
818 (ii) shall:
819 (A) provide for the implementation of the subtraction described in Subsection (2)(d);
820 (B) be in writing;
821 (C) be signed by:
822 (I) the governor; and
823 (II) the chair of the Business Committee of the Ute tribe;
824 (D) be conditioned on obtaining any approval required by federal law; and
825 (E) state the effective date of the agreement.

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

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

832 (d) For purposes of Subsection (2)(d) and in accordance with Title 63, Chapter 46a,
833 Utah Administrative Rulemaking Act, the commission may make rules:

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

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

838 Section 9. Section **59-10-303** is amended to read:

839 **59-10-303. Nonresident's share of partnership income.**

840 (1) In determining the adjusted gross income of a nonresident partner of any
841 partnership, there shall be included only that part derived from or connected with sources in
842 this state of the partner's distributive share of items of partnership income, gain, loss, and
843 deduction entering into ~~[his federal]~~ the partner's adjusted gross income, as such part is
844 determined under rules prescribed by the commission in accordance with the general rules in
845 Section 59-10-116.

846 (2) In determining the sources of a nonresident partner's income, no effect shall be
847 given to a provision in the partnership agreement which:

848 (a) characterizes payments to the partner as being for services or for the use of capital,
849 or allocates to the partner, as income or gain from sources outside this state, a greater
850 proportion of ~~[his]~~ the partner's distributive share of partnership income or gain than the ratio
851 of partnership income or gain from sources outside this state to partnership income or gain
852 from all sources, except as authorized in Subsection (4);

853 (b) allocates to the partner a greater proportion of a partnership item of loss or
854 deduction connected with sources in this state than ~~[his]~~ the partner's proportionate share, for
855 federal income tax purposes, of partnership loss or deduction generally, except as authorized in
856 Subsection (4).

857 (3) Any modification described in Section 59-10-114 that relates to an item of
858 partnership income, gain, loss, or deduction, shall be made in accordance with the partner's
859 distributive share for federal income tax purposes of the item to which the modification relates,
860 but limited to the portion of such item derived from or connected with sources in this state.

861 (4) The commission may, on application, authorize the use of such other methods of
862 determining a nonresident partner's portion of partnership items derived from or connected
863 with sources in this state, and the modifications related thereto, as may be appropriate and
864 equitable, on such terms and conditions as ~~[it]~~ the commission may require.

865 (5) (a) A nonresident partner's distributive share of items of income, gain, loss, or
866 deduction shall be determined under Subsection 59-10-302(2).

867 (b) The character of partnership items for a nonresident partner shall [~~also~~] be
868 determined under Subsection 59-10-302(1).

869 Section 10. Section **59-10-1002** is amended to read:

870 **59-10-1002. Definitions.**

871 As used in this part:

872 (1) (a) Except as provided in Subsection (1)(b) or Subsection 59-10-1003(2),
873 "claimant" means a resident or nonresident person that has state taxable income [~~under Part 1,~~
874 ~~Determination and Reporting of Tax Liability and Information~~].

875 (b) "Claimant" does not include an estate or trust.

876 (2) Except as provided in Subsection 59-10-1003(2), "estate" means a nonresident
877 estate or a resident estate that has state taxable income [~~under Part 2, Trusts and Estates~~].

878 (3) "Nonrefundable tax credit" or "tax credit" means a tax credit that a claimant, estate,
879 or trust may:

880 (a) claim:

881 (i) as provided by statute; and

882 (ii) in an amount that does not exceed the claimant's, estate's, or trust's tax liability
883 under this chapter for a taxable year; and

884 (b) carry forward or carry back:

885 (i) if allowed by statute; and

886 (ii) to the extent that the amount of the tax credit exceeds the claimant's, estate's, or
887 trust's tax liability under this chapter for a taxable year.

888 (4) Except as provided in Subsection 59-10-1003(2), "trust" means a nonresident trust
889 or a resident trust that has state taxable income [~~under Part 2, Trusts and Estates~~].

890 Section 11. Section **59-10-1005** is amended to read:

891 **59-10-1005. Tax credit for at-home parent.**

892 (1) As used in this section:

893 (a) "At-home parent" means a parent:

894 (i) who provides full-time care at the parent's residence for one or more of the parent's
895 own qualifying children;

896 (ii) who claims the qualifying child as a dependent on the parent's individual income
897 tax return for the taxable year for which the parent claims the credit; and

898 (iii) if the sum of the following amounts are \$3,000 or less for the taxable year for
899 which the parent claims the credit:

900 (A) the total wages, tips, and other compensation listed on all of the parent's federal
901 Forms W-2; and

902 (B) the gross income listed on the parent's federal Form 1040 Schedule C, Profit or
903 Loss From Business.

904 (b) "Parent" means an individual who:

905 (i) is the biological mother or father of a qualifying child;

906 (ii) is the stepfather or stepmother of a qualifying child;

907 (iii) (A) legally adopts a qualifying child; or

908 (B) has a qualifying child placed in the individual's home:

909 (I) by a child placing agency as defined in Section 62A-4a-601; and

910 (II) for the purpose of legally adopting the child;

911 (iv) is a foster parent of a qualifying child; or

912 (v) is a legal guardian of a qualifying child.

913 (c) "Qualifying child" means a child who is no more than 12 months of age on the last
914 day of the taxable year for which the tax credit is claimed.

915 (2) For taxable years beginning on or after January 1, 2000, a claimant may claim on
916 the claimant's individual income tax return a nonrefundable tax credit of \$100 for each
917 qualifying child if:

918 (a) the claimant or another claimant filing a joint individual income tax return with the
919 claimant is an at-home parent; and

920 (b) the ~~federal~~ adjusted gross income of all of the claimants filing the individual
921 income tax return is less than or equal to \$50,000.

922 (3) A claimant may not carry forward or carry back a tax credit authorized by this
923 section.

924 (4) It is the intent of the Legislature that for fiscal years beginning on or after fiscal
925 year 2000-01, the Legislature appropriate from the General Fund a sufficient amount to replace
926 Uniform School Fund revenues expended to provide for the tax credit under this section.

927 Section 12. Section **59-10-1201** is enacted to read:

928 **Part 12. Single Rate Individual Income Tax Act**

929 **59-10-1201. Title.**

930 This part is known as the "Single Rate Individual Income Tax Act."

931 Section 13. Section **59-10-1202** is enacted to read:

932 **59-10-1202. Definitions.**

933 As used in this part:

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

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

936 (3) "State income tax percentage" means a percentage equal to a nonresident
937 individual's adjusted gross income for the taxable year received from Utah sources, as
938 determined under Section 59-10-117, divided by the difference between:

939 (a) the nonresident individual's total adjusted gross income for that taxable year; and

940 (b) if the nonresident individual described in Subsection (3)(a) is a servicemember, the
941 compensation the servicemember receives for military service if the servicemember is serving
942 in compliance with military orders.

943 (4) "State taxable income" means a resident or nonresident individual's adjusted gross
944 income after making the:

945 (a) additions and subtractions required by Section 59-10-1204; and

946 (b) adjustments required by Section 59-10-1205.

947 (5) "Unapportioned state tax" means the product of the:

948 (a) difference between:

949 (i) a nonresident individual's state taxable income; and

950 (ii) if the nonresident individual described in Subsection (5)(a)(i) is a servicemember,
951 compensation the servicemember receives for military service if the servicemember is serving
952 in compliance with military orders; and

953 (b) percentage listed in Subsection 59-10-1203(2)(a)(i)(B).

954 Section 14. Section **59-10-1203** is enacted to read:

955 **59-10-1203. Single rate tax for resident or nonresident individual -- Tax rate --**

956 **Contributions -- Exemption -- Amended returns.**

957 (1) For taxable years beginning on or after January 1, 2007, a resident or nonresident

958 individual may calculate and pay a tax under this section as provided in this part.

959 (2) (a) A resident individual that calculates and pays a tax under this section:

960 (i) shall pay for a taxable year an amount equal to the product of:

961 (A) the resident individual's state taxable income for that taxable year; and

962 (B) 5.35%; and

963 (ii) is exempt from paying the tax imposed by Section 59-10-104.

964 (b) A nonresident individual that calculates and pays a tax under this section:

965 (i) shall pay for a taxable year an amount equal to the product of the nonresident

966 individual's:

967 (A) unapportioned state tax; and

968 (B) state income tax percentage; and

969 (ii) is exempt from paying the tax imposed by Section 59-10-116.

970 (3) Except as required by Section 59-10-1204 or 59-10-1205, a resident or nonresident

971 individual that calculates and pays a tax under this section may not make any addition or

972 adjustment to or subtraction from adjusted gross income.

973 (4) A resident or nonresident individual that calculates and pays a tax under this

974 section may designate on the resident or nonresident individual's individual income tax return

975 for a taxable year a contribution allowed by:

976 (a) Section 59-10-530;

977 (b) Section 59-10-530.5;

978 (c) Section 59-10-547;

979 (d) Section 59-10-549;

980 (e) Section 59-10-550;

981 (f) Section 59-10-550.1; or

982 (g) Section 59-10-550.2.

983 (5) This section does not apply to a resident or nonresident individual exempt from

984 taxation under Section 59-10-104.1.

985 (6) (a) A resident or nonresident individual may determine for each taxable year for

986 which the resident or nonresident individual files an individual income tax return under this

987 chapter whether to calculate and pay a tax under this section as provided in this part.

988 (b) If a resident or nonresident individual files an amended return for a taxable year

989 beginning on or after January 1, 2007, the resident or nonresident individual may determine
990 whether to calculate and pay a tax under this section as provided in this part for that taxable
991 year.

992 Section 15. Section **59-10-1204** is enacted to read:

993 **59-10-1204. Additions to and subtractions from adjusted gross income of a**
994 **resident or nonresident individual.**

995 (1) In calculating state taxable income for purposes of this part, the following amounts
996 shall be added to the adjusted gross income of a resident or nonresident individual:

997 (a) the amount described in Subsection 59-10-114(1)(a), if that amount is deducted by
998 a resident or nonresident estate or trust in determining federal taxable income;

999 (b) the lump sum distribution described in Subsection 59-10-114(1)(b);

1000 (c) subject to Subsection 59-10-114(5), the amount described in Subsection
1001 59-10-114(1)(c);

1002 (d) a withdrawal described in Subsection 59-10-114(1)(e);

1003 (e) the amount described in Subsection 59-10-114(1)(f);

1004 (f) subject to Subsection 59-10-114(6), the interest described in Subsection
1005 59-10-114(1)(g);

1006 (g) a distribution described in Subsection 59-10-114(1)(h);

1007 (h) a distribution described in Subsection 59-10-114(1)(i); or

1008 (i) an expense described in Subsection 59-10-114 (1)(j).

1009 (2) In calculating state taxable income for purposes of this part, the following amounts
1010 shall be subtracted from the adjusted gross income of a resident or nonresident individual:

1011 (a) the interest or dividends described in Subsection 59-10-114(2)(a);

1012 (b) subject to Subsection 59-10-114(4), the amount described in Subsection
1013 59-10-114(2)(k);

1014 (c) an amount described in Subsection 59-10-114(2)(n);

1015 (d) the amount described in Subsection 59-10-114(2)(o); and

1016 (e) an amount described in Subsection 59-10-114(2)(p).

1017 Section 16. Section **59-10-1205** is enacted to read:

1018 **59-10-1205. Adjustments to adjusted gross income of a resident or nonresident**
1019 **individual.**

1020 (1) In calculating state taxable income for purposes of this part, the commission shall
1021 allow an adjustment to adjusted gross income of a resident or nonresident individual if the
1022 resident or nonresident individual would otherwise:

1023 (a) receive a double tax benefit under this part; or

1024 (b) suffer a double tax detriment under this part.

1025 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1026 commission may make rules to allow for the adjustment to adjusted gross income required by
1027 Subsection (1).

1028 Section 17. Section **59-10-1206** is enacted to read:

1029 **59-10-1206. Tax credits.**

1030 (1) Subject to Subsections (2) and (3), a resident or nonresident individual that
1031 calculates and pays a tax as provided in this part may claim, carry forward, or carry back any
1032 tax credit for a taxable year:

1033 (a) against the tax liability that the resident or nonresident individual would otherwise
1034 be required to pay; and

1035 (b) that the resident or nonresident individual would have been allowed to claim, carry
1036 forward, or carry back for the taxable year had the resident or nonresident individual been
1037 subject to a tax imposed by Part 1, Determination and Reporting of Tax Liability and
1038 Information, for that taxable year.

1039 (2) A resident or nonresident individual that calculates and pays a tax as provided in
1040 this part shall:

1041 (a) determine the resident or nonresident individual's eligibility to claim a tax credit on
1042 the basis of the resident or nonresident individual's tax liability under this part; and

1043 (b) calculate a tax credit on the basis of the resident or nonresident individual's tax
1044 liability under this part.

1045 (3) If a resident or nonresident individual that calculates and pays a tax as provided in
1046 this part claims a refundable tax credit, the resident or nonresident individual may receive a
1047 refund for the amount of the tax credit that exceeds the resident or nonresident individual's tax
1048 liability for the taxable year as allowed by the statute authorizing the refundable tax credit.

1049 (4) The commission shall administer a tax credit that a resident or nonresident
1050 individual claims, carries forward, or carries back in accordance with the statute authorizing the

1051 tax credit.

1052 Section 18. Section **59-10-1207** is enacted to read:

1053 **59-10-1207. Administration, collection, and enforcement of tax.**

1054 (1) Except as provided in this part, the commission shall administer, collect, and
1055 enforce a tax described in Subsection 59-10-1203(2) in accordance with:

1056 (a) (i) for a tax described in Subsection 59-10-1203(2)(a), the procedures used to
1057 administer, collect, and enforce the tax described in Section 59-10-104; or

1058 (ii) for a tax described in Subsection 59-10-1203(2)(b), the procedures used to
1059 administer, collect, and enforce the tax described in Section 59-10-116; and

1060 (b) the procedures established in:

1061 (i) Part 1, Determination and Reporting of Tax Liability and Information;

1062 (ii) Part 3, Partnerships;

1063 (iii) Part 4, Withholding of Tax;

1064 (iv) Part 5, Procedure and Administration; and

1065 (v) Part 8, Limited Liability Companies.

1066 (2) In administering, collecting, and enforcing a tax described in Subsection
1067 59-10-1203(2), the commission shall interpret:

1068 (a) the references to the term "federal taxable income" in Section 59-10-119 to be
1069 changed to "adjusted gross income";

1070 (b) the references to Section 59-10-114 in Sections 59-10-302 and 59-10-303 to be
1071 changed to Section 59-10-1204; and

1072 (c) any other reference to a term or provision in the following to be consistent with the
1073 calculation of a tax under this part:

1074 (i) Part 1, Determination and Reporting of Tax Liability and Information;

1075 (ii) Part 3, Partnerships;

1076 (iii) Part 4, Withholding of Tax;

1077 (iv) Part 5, Procedure and Administration; and

1078 (v) Part 8, Limited Liability Companies.

1079 Section 19. **Repealer.**

1080 This bill repeals:

1081 Section **59-10-102, Declaration of intent.**

1082 Section **59-10-105, Optional tax -- Calculation -- Commission authority to**
1083 **prescribed tax tables -- Exemption.**

1084 Section **59-10-111, Federal taxable income defined.**

1085 Section **59-10-112, State taxable income of a resident individual.**

1086 Section 20. **Effective date -- Retrospective operation.**

1087 (1) Except as provided in Subsection (2), this bill takes effect for taxable years
1088 beginning on or after January 1, 2007.

1089 (2) The amendments in this bill to Section 59-10-104 have retrospective operation for
1090 taxable years beginning on or after January 1, 2006.

Legislative Review Note
as of 9-12-06 11:55 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

FOURTH SPECIAL SESSION

State Impact

Passage of this bill would result in a Uniform School Fund loss of \$66,000,000 in FY 2007 and a loss of \$78,000,000 in FY 2008. The Tax Commission would require an appropriation of \$28,000 beginning in FY 2008 for increased publications costs related to changes in the tax booklet.

The fiscal impact provided above is based on February 2006 revenue estimates. Collections to date are above target for FY 2006. Therefore, the anticipated impact could be up to \$7,000,000 million higher than identified.

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2007</u>	<u>FY 2008</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>
Uniform School Fund	\$0	\$28,000	(\$66,000,000)	(\$78,000,000)
TOTAL	\$0	\$28,000	(\$66,000,000)	(\$78,000,000)

Individual and Business Impact

The impact on individuals will be dependent upon income levels and deductions and exemptions claimed.

Office of the Legislative Fiscal Analyst