

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

- (1) There shall be added to unadjusted income of a resident or nonresident estate or trust:
  - (a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in determining adjusted gross income;
  - (b) except as provided in Subsection (3), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more of the following entities:
    - (i) a state other than this state;
    - (ii) the District of Columbia;
    - (iii) a political subdivision of a state other than this state; or
    - (iv) an agency or instrumentality of an entity described in Subsections (1)(b)(i) through (iii);
  - (c) any portion of federal taxable income for a taxable year if that federal taxable income is derived from stock:
    - (i) in an S corporation; and
    - (ii) that is held by an electing small business trust;
  - (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a resident or nonresident estate or trust that is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or trust that is the account owner:
    - (i) is not expended for:
      - (A) higher education costs as defined in Section 53B-8a-102; or
      - (B) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and
    - (ii) is:
      - (A) subtracted by the resident or nonresident estate or trust:
        - (I) that is the account owner; and
        - (II) on the resident or nonresident estate's or trust's return filed under this chapter for a taxable year beginning on or before December 31, 2007; or
      - (B) used as the basis for the resident or nonresident estate or trust that is the account owner to claim a tax credit under Section 59-10-1017; and
  - (e) any fiduciary adjustments required by Section 59-10-210.
- (2) There shall be subtracted from unadjusted income of a resident or nonresident estate or trust:
  - (a) the interest or a dividend on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent that interest or dividend is included in gross income for federal income tax purposes for the taxable year but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;
  - (b) income of an irrevocable resident trust if:
    - (i) the income would not be treated as state taxable income derived from Utah sources under Section 59-10-204 if received by a nonresident trust;

- (ii) the trust first became a resident trust on or after January 1, 2004;
  - (iii) no assets of the trust were held, at any time after January 1, 2003, in another resident irrevocable trust created by the same settlor or the spouse of the same settlor;
  - (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);
  - (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the settlor or any other person is treated as an owner of any portion of the trust under Subtitle A, Subchapter J, Subpart E of the Internal Revenue Code; and
  - (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on indebtedness incurred or continued to purchase or carry the assets generating the income described in this Subsection (2)(b), and by any expenses incurred in the production of income described in this Subsection (2)(b), to the extent that those expenses, including amortizable bond premiums, are deductible in determining federal taxable income;
  - (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or nonresident estate or trust derived from a deceased Ute tribal member:
    - (i) during a time period that the Ute tribal member resided on homesteaded land diminished from the Uintah and Ouray Reservation; and
    - (ii) from a source within the Uintah and Ouray Reservation;
  - (d) any amount:
    - (i) received by a resident or nonresident estate or trust;
    - (ii) that constitutes a refund of taxes imposed by:
      - (A) a state; or
      - (B) the District of Columbia; and
    - (iii) to the extent that amount is included in total income on that resident or nonresident estate's or trust's federal tax return for estates and trusts for that taxable year;
  - (e) the amount of a railroad retirement benefit:
    - (i) paid:
      - (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq.;
      - (B) to a resident or nonresident estate or trust derived from a deceased resident or nonresident individual; and
      - (C) for the taxable year; and
    - (ii) to the extent that railroad retirement benefit is included in total income on that resident or nonresident estate's or trust's federal tax return for estates and trusts;
  - (f) an amount:
    - (i) received by a resident or nonresident estate or trust if that amount is derived from a deceased enrolled member of an American Indian tribe; and
    - (ii) to the extent that the state is not authorized or permitted to impose a tax under this part on that amount in accordance with:
      - (A) federal law;
      - (B) a treaty; or
      - (C) a final decision issued by a court of competent jurisdiction;
  - (g) the amount that a qualified nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for the taxable year; and
  - (h) any fiduciary adjustments required by Section 59-10-210.
- (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) may not

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

- (a) for an entity described in Subsection (1)(b)(i) or (ii), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
  - (b) for an entity described in Subsection (1)(b)(iii) or (iv), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:
    - (i) the entity; or
    - (ii)
      - (A) the state in which the entity is located; or
      - (B) the District of Columbia, if the entity is located within the District of Columbia.
- (4)
- (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:
    - (i) the income is derived from a deceased Ute tribal member; and
    - (ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).
  - (b) The agreement described in Subsection (4)(a):
    - (i) may not:
      - (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
      - (B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(c); or
      - (C) affect the power of the state to establish rates of taxation; and
    - (ii) shall:
      - (A) provide for the implementation of the subtraction described in Subsection (2)(c);
      - (B) be in writing;
      - (C) be signed by:
        - (I) the governor; and
        - (II) the chair of the Business Committee of the Ute tribe;
      - (D) be conditioned on obtaining any approval required by federal law; and
      - (E) state the effective date of the agreement.
  - (c)
    - (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.
    - (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.
  - (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:
    - (i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and
    - (ii) that are substantially similar to how adjusted gross income derived from Utah sources is determined under Section 59-10-117.

Amended by Chapter 6, 2010 General Session