

1                                   **INDIVIDUAL INCOME TAX DEDUCTION FOR**  
2   **NET CAPITAL GAIN**  
3   2001 GENERAL SESSION  
4   STATE OF UTAH

5                                   **Sponsor: James A. Ferrin**

6   **This act modifies the Individual Income Tax Act to allow an individual a deduction from**  
7   **federal taxable income for a portion of income derived from net capital gain, and to make**  
8   **technical changes. This act has retrospective operation for taxable years beginning on or**  
9   **after January 1, 2001.**

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12                   **59-10-114**, as last amended by Chapter 257, Laws of Utah 2000

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

14                   Section 1. Section **59-10-114** is amended to read:

15                   **59-10-114. Additions to and subtractions from federal taxable income of an**  
16 **individual.**

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

18                   (a) the amount of any income tax imposed by this or any predecessor Utah individual  
19 income tax law and the amount of any income tax imposed by the laws of another state, the District  
20 of Columbia, or a possession of the United States, to the extent deducted from federal adjusted  
21 gross income, as defined by Section 62, Internal Revenue Code, in determining federal taxable  
22 income;

23                   (b) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal  
24 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in  
25 determining federal adjusted gross income;

26                   (c) 25% of the personal exemptions, as defined and calculated in the Internal Revenue  
27 Code;

28 (d) a withdrawal from a medical care savings account and any penalty imposed in the  
29 taxable year if:

30 (i) the taxpayer did not deduct or include the amounts on his federal tax return pursuant  
31 to Section 220, Internal Revenue Code; and

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

33 (e) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education  
34 Savings Incentive Program, in the year in which the amount is refunded.

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

37 (a) the interest or dividends on obligations or securities of the United States and its  
38 possessions or of any authority, commission, or instrumentality of the United States, to the extent  
39 includable in gross income for federal income tax purposes but exempt from state income taxes  
40 under the laws of the United States, but the amount subtracted under this Subsection (2)(a) shall  
41 be reduced by any interest on indebtedness incurred or continued to purchase or carry the  
42 obligations or securities described in this Subsection (2)(a), and by any expenses incurred in the  
43 production of interest or dividend income described in this Subsection (2)(a) to the extent that such  
44 expenses, including amortizable bond premiums, are deductible in determining federal taxable  
45 income;

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

49 (c) the amount of adoption expenses which, for purposes of this Subsection (2)(c), means  
50 any actual medical and hospital expenses of the mother of the adopted child which are incident to  
51 the child's birth and any welfare agency, child placement service, legal, and other fees or costs  
52 relating to the adoption;

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

59 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500 personal  
60 retirement exemption;

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

64 (g) any amount included in federal taxable income that was received pursuant to any  
65 federal law enacted in 1988 to provide reparation payments, as damages for human suffering, to  
66 United States citizens and resident aliens of Japanese ancestry who were interned during World  
67 War II;

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

70 (i) for:

71 (A) the taxpayer;

72 (B) the taxpayer's spouse; and

73 (C) the taxpayer's dependents; and

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

76 (i) except as otherwise provided in this Subsection (2)(i), the amount of a contribution  
77 made in the tax year on behalf of the taxpayer to a medical care savings account and interest earned  
78 on a contribution to a medical care savings account established pursuant to Title 31A, Chapter 32a,  
79 Medical Care Savings Account Act, to the extent the contribution is accepted by the account  
80 administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not  
81 deduct or include amounts on his federal tax return pursuant to Section 220, Internal Revenue  
82 Code. A contribution deductible under this Subsection (2)(i) may not exceed either of the  
83 following:

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

88 (ii) the maximum contribution allowed under the Medical Care Savings Account Act for  
89 the tax year for taxpayers:

- 90 (A) who do not file a joint return; or
- 91 (B) who file a joint return, but do not qualify under Subsection (2)(i)(i); ~~and~~
- 92 (j) the amount included in federal taxable income that was derived from money paid by
- 93 the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive
- 94 Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d) and investment
- 95 income earned on participation agreements under Subsection 53B-8a-106(1) when used for higher
- 96 education costs of the beneficiary;
- 97 (k) for tax years beginning on or after January 1, 2000, any amounts paid for premiums
- 98 ~~on~~ for long-term care insurance ~~policies~~ as defined in Section 31A-22-1402 to the extent the
- 99 amounts paid for long-term care insurance were not deducted under Section 213, Internal Revenue
- 100 Code, in determining federal taxable income; ~~and~~
- 101 (l) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection
- 102 (4)(a) are met, the amount of income derived by a Ute tribal member:
- 103 (i) during a time period that the Ute tribal member resides on homesteaded land
- 104 diminished from the Uintah and Ouray Reservation; and
- 105 (ii) from a source within the Uintah and Ouray Reservation~~[-];~~ and
- 106 (m) for taxable years beginning on or after January 1, 2001, 14-1/4% of the amount of the
- 107 individual's net capital gain as defined in Section 1222, Internal Revenue Code.
- 108 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted for
- 109 taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or \$4,800,
- 110 except that:
- 111 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned
- 112 over \$32,000, the amount of the retirement income exemption that may be subtracted shall be
- 113 reduced by 50 cents;
- 114 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
- 115 earned over \$16,000, the amount of the retirement income exemption that may be subtracted shall
- 116 be reduced by 50 cents; and
- 117 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000,
- 118 the amount of the retirement income exemption that may be subtracted shall be reduced by 50
- 119 cents.
- 120 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption

121 shall be further reduced according to the following schedule:

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

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

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

129 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be calculated  
130 by adding to federal adjusted gross income any interest income not otherwise included in federal  
131 adjusted gross income.

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

137 (e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care  
138 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

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

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

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

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

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

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

148 (i) may not:

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

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

152 (C) affect the power of the state to establish rates of taxation; and  
153 (ii) shall:  
154 (A) provide for the implementation of the subtraction described in Subsection (2)(l);  
155 (B) be in writing;  
156 (C) be signed by:  
157 (I) the governor; and  
158 (II) the chair of the Business Committee of the Ute tribe;  
159 (D) be conditioned on obtaining any approval required by federal law; and  
160 (E) state the effective date of the agreement.  
161 (c) (i) The governor shall report to the commission by no later than February 1 of each year  
162 regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.  
163 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the  
164 subtraction permitted under Subsection (2)(l) is not allowed for taxable years beginning on or after  
165 the January 1 following the termination of the agreement.  
166 (d) For purposes of Subsection (2)(l) and in accordance with Title 63, Chapter 46a, Utah  
167 Administrative Rulemaking Act, the commission may make rules:  
168 (i) for determining whether income is derived from a source within the Uintah and Ouray  
169 Reservation; and  
170 (ii) that are substantially similar to how federal adjusted gross income derived from Utah  
171 sources is determined under Section 59-10-117.  
172 **Section 2. Retrospective operation.**  
173 This act has retrospective operation for taxable years beginning on or after January 1, 2001.

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**Legislative Review Note**  
**as of 1-23-01 8:07 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**