

**HIGHER EDUCATION SAVINGS INCENTIVE
PROGRAM AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine M. Bryson

This act modifies State System of Higher Education code and Revenue and Taxation Code provisions relating to Higher Education Savings Incentive Programs, including refund provisions.

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

AMENDS:

53B-8a-108, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session

53B-8a-109, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session

59-7-105, as last amended by Chapter 4, Laws of Utah 1996, Second Special Session

59-7-106, as last amended by Chapter 4, Laws of Utah 1996, Second Special Session

59-10-114, as last amended by Chapters 7 and 9, Laws of Utah 2001, First Special Session

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

Section 1. Section **53B-8a-108** is amended to read:

53B-8a-108. Cancellation of agreements.

(1) Any participant may cancel a participation agreement at will.

(2) If the participation agreement is canceled by a participant prior to the expiration of two years from the date of original execution of the participation agreement, the participant shall receive 100% of the principal amount of all contributions made by the participant, up to the current account balance, but any investment income which has been credited to the participant's account [~~shall~~] may be retained by the trust to cover administration expenses.

(3) After a participation agreement has been in effect for two years, [~~participants~~] a participant shall be entitled to the return upon cancellation of the agreement of the principal amount of all contributions made by [~~participants~~] the participant, up to the current account balance, plus actual investment income on the contributions less a reasonable administrative refund fee to be levied by the trust, which shall be sufficient to reasonably compensate the trust for its

administrative costs incident to the participation agreement.

(4) (a) Upon the occurrence of any of the following circumstances, ~~no~~ a reasonable administration refund fee may not be levied by the trust in the event of termination of a participation agreement:

- (i) death of the beneficiary; or
- (ii) permanent disability or mental incapacity of the beneficiary.

(b) In the event of cancellation of a participation agreement for any of the causes listed in Subsection (4)(a), the participant shall be entitled to receive the principal amount of all payments made by the participant under the participation agreement, up to the current account balance, and the actual investment income earned on the payments.

Section 2. Section **53B-8a-109** is amended to read:

**53B-8a-109. Repayment and ownership of payments and investment income --
Transfer of ownership rights.**

(1) (a) The participant retains ownership of all payments made under any participation agreement up to the date of utilization for payment of higher education costs for the beneficiary.

(b) All income derived from the investment of the payments made by the participant shall be considered to be held in trust for the benefit of the beneficiary.

(2) (a) In the event the participation agreement is terminated prior to payment of higher education costs for the beneficiary, the participant is entitled to a full refund of all payments made under the participation agreement, up to the current account balance, and all investment income credited on all the payments~~[-]~~, less:

- (i) a reasonable administrative fee which may be levied by the trust; and
- (ii) any penalty or tax required to be withheld by the Internal Revenue Code.

(b) No right to receive investment income shall exist in cases of voluntary participant termination except as provided in Section 53B-8a-108.

(3) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant.

(4) The institution of higher education shall obtain ownership of the payments made for the higher education costs paid to the institution at the time each payment is made to the institution.

(5) Any amounts which may be paid pursuant to the Utah Educational Savings Plan Trust which are not listed in this section are owned by the trust.

(6) (a) A participant may transfer ownership rights to another eligible participant, including a gift of the ownership rights to a minor beneficiary.

(b) The transfer shall be affected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement.

Section 3. Section **59-7-105** is amended to read:

59-7-105. Additions to unadjusted income.

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

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

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

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

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

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

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

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

(6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;

(7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated technological equipment;

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

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

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

(11) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed under Section 59-7-107; and

(12) the amount refunded to a participant or beneficiary under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, to the extent deducted on a Utah return in previous years and not used for qualified higher education costs of the beneficiary, in the year in which the amount is refunded.

Section 4. Section **59-7-106** is amended to read:

59-7-106. Subtractions from unadjusted income.

In computing adjusted income the following amounts shall be subtracted from unadjusted income:

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

(2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct the loss on the current Utah return. The deduction shall be made by claiming the deduction on the current Utah return which shall be filed by the due date of the return, including extensions. For the purposes of this subsection all capital losses in a given year must be:

(a) deducted in the year incurred; or

(b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue Code;

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

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

(5) the decrease in qualified clinical testing expense deduction for federal income tax purposes due to claiming the federal orphan drug credit under Section 28, Internal Revenue Code;

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

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

(8) any income on the federal corporate return that has been previously taxed by Utah;

(9) amounts included in federal taxable income that are due to refunds of taxes imposed for the privilege of doing business, or exercising a corporate franchise, including income, franchise, corporate stock and business and occupation taxes paid by the corporation to Utah, another state of the United States, a foreign country, a United States possession, or the Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income under Section 59-7-105;

(10) charitable contributions, to the extent allowed as a subtraction under Section 59-7-109;

(11) (a) 50% of the dividends deemed received or received from subsidiaries which are members of the unitary group and are organized or incorporated outside of the United States unless such subsidiaries are included in a combined report under Section 59-7-402 or 59-7-403. In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the dividends deemed received or received, the expense directly attributable to those dividends. Interest expense attributable to excluded dividends shall be determined by multiplying interest expense by a fraction, the numerator of which is the taxpayer's average investment in such dividend paying subsidiaries, and the denominator of which is the taxpayer's average total investment in assets;

(b) in determining income apportionable to this state, a portion of the factors of a foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be included in the combined report factors. The portion to be included shall be determined by multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the numerator of which is the amount of the dividend paid by the foreign subsidiary which is included in adjusted income, and the

denominator of which is the current year earnings and profits of the foreign subsidiary as determined under the Internal Revenue Code;

(12) (a) 50% of the adjusted income of a foreign operating company unless the taxpayer has elected to file a worldwide combined report as provided in Section 59-7-403. For purposes of this subsection, when calculating the adjusted income of a foreign operating company, a foreign operating company may not deduct the subtractions allowable under this subsection and Subsection (11);

(b) in determining income apportionable to this state, the factors for a foreign operating company shall be included in the combined report factors in the same percentage its adjusted income is included in the combined adjusted income;

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

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

(15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed under Section 59-7-107; and

(b) if there has been a reduction in federal basis for a federal tax credit where there is no corresponding Utah tax credit, the amount of the reduction in basis shall be allowed as an expense in the year of the federal credit;

(16) any interest expense not deducted on the federal corporate return under Section 265(b) or 291(e), Internal Revenue Code;

(17) 100% of the dividends received from subsidiaries which are insurance companies exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"

as defined by Subsection 59-7-101(7); and

(18) any amount included in unadjusted income that was derived from money paid by the taxpayer to the program fund and investment income earned on those payments under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, that is included in federal taxable income, but only when the monies are used for qualified higher education costs of the beneficiary.

Section 5. Section **59-10-114** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is refunded; and

(g) except as provided in Subsection (6), for taxable years beginning on or after January 1, 2003, 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)(g)(i) through (iii).

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

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

(b) (i) except as provided in Subsection (2)(b)(ii), 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as reported on the United States individual income tax return of the taxpayer for the same taxable year; and

(ii) notwithstanding Subsection (2)(b)(i), for taxable years beginning on or after January 1, 2001, the amount of a credit or an advance refund amount reported on a resident or nonresident individual's United States individual income tax return allowed as a result of the acceleration of the income tax rate bracket benefit for 2001 in accordance with Section 101, Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, may not be used in calculating the amount described in Subsection (2)(b)(i);

(c) the amount of adoption expenses which, for purposes of this Subsection (2)(c), means

any actual medical and hospital expenses of the mother of the adopted child which are incident to the child's birth and any welfare agency, child placement service, legal, and other fees or costs relating to the adoption;

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

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

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

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

(h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the taxable

year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

(i) for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

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

(i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a contribution made during the taxable year on behalf of the taxpayer to a medical care savings account and interest earned on a contribution to a medical care savings account established pursuant to Title 31A,

Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by the account administrator as provided in the Medical Care Savings Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax return pursuant to Section 220, Internal Revenue Code; and

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

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

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

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

(II) who file a joint return, but do not qualify under Subsection (2)(i)(i)(A); and

(j) the amount included in federal taxable income that was derived from money paid by the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d), and investment income earned on participation agreements under Subsection 53B-8a-106(1) ~~[when used for]~~ that is included in federal taxable income, but only when the funds are used for qualified higher education costs of the beneficiary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) A subtraction for an amount described in Subsection (2)(1) is allowed only if:

(i) the taxpayer is a 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)(1); 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)(1);

(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)(1) 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)(l) and in accordance with Title 63, Chapter 46a, 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 federal adjusted gross income derived from Utah sources is determined under Section 59-10-117.

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

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

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

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

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

(i) the lesser of:

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

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

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

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

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

(6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences of

indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be added to federal taxable income of a resident or nonresident individual if, as annually determined by the commission:

(a) for an entity described in Subsection (1)(g)(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)(g)(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.