

1 **INDIVIDUAL INCOME TAX DEDUCTION FOR**
2 **NET CAPITAL GAIN**
3 2002 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, 2002.**

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

11 AMENDS:

12 **59-10-114**, as last amended by Chapters 7 and 9, Laws of Utah 2001, First Special Session
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 that the taxpayer does not include in adjusted gross income
24 on the taxpayer's federal individual income tax return for the taxable year;

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

27 (i) a parent elects to report on the parent's federal individual income tax return for the



28 taxable year; and

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

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

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

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

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

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

40 (g) except as provided in Subsection (6), for taxable years beginning on or after January
41 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after January 1,
42 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more
43 of the following entities:

44 (i) a state other than this state;

45 (ii) the District of Columbia;

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

47 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through

48 (iii).

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

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

59 income;

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

63 (ii) notwithstanding Subsection (2)(b)(i), for taxable years beginning on or after January
64 1, 2001, the amount of a credit or an advance refund amount reported on a resident or nonresident
65 individual's United States individual income tax return allowed as a result of the acceleration of
66 the income tax rate bracket benefit for 2001 in accordance with Section 101, Economic Growth
67 and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, may not be used in calculating the
68 amount described in Subsection (2)(b)(i);

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

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

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

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

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

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

90 (i) for:
91 (A) the taxpayer;
92 (B) the taxpayer's spouse; and
93 (C) the taxpayer's dependents; and
94 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213,
95 Internal Revenue Code, in determining federal taxable income for the taxable year;
96 (i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a contribution
97 made during the taxable year on behalf of the taxpayer to a medical care savings account and
98 interest earned on a contribution to a medical care savings account established pursuant to Title
99 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted
100 by the account administrator as provided in the Medical Care Savings Account Act, and if the
101 taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax return
102 pursuant to Section 220, Internal Revenue Code; and
103 (ii) a contribution deductible under this Subsection (2)(i) may not exceed either of the
104 following:
105 (A) the maximum contribution allowed under the Medical Care Savings Account Act for
106 the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is covered by
107 health care insurance as defined in Section 31A-1-301 or self-funded plan that covers the other
108 spouse, and each spouse has a medical care savings account; or
109 (B) the maximum contribution allowed under the Medical Care Savings Account Act for
110 the tax year for taxpayers:
111 (I) who do not file a joint return; or
112 (II) who file a joint return, but do not qualify under Subsection (2)(i)(i)(A); and
113 (j) the amount included in federal taxable income that was derived from money paid by
114 the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education Savings Incentive
115 Program, not to exceed amounts determined under Subsection 53B-8a-106(1)(d) and investment
116 income earned on participation agreements under Subsection 53B-8a-106(1) when used for higher
117 education costs of the beneficiary;
118 (k) for taxable years beginning on or after January 1, 2000, any amounts paid for premiums
119 for long-term care insurance as defined in Section 31A-1-301 to the extent the amounts paid for
120 long-term care insurance were not deducted under Section 213, Internal Revenue Code, in

121 determining federal taxable income; ~~and~~

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

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

126 (ii) from a source within the Uintah and Ouray Reservation~~[-]; and~~

127 (m) for taxable years beginning on or after January 1, 2002, 50% of the amount of the
128 individual's net capital gain as defined in Section 1222, Internal Revenue Code.

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

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

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

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

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

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

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

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

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

152 adjusted gross income.

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

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

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

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

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

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

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

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

169 (i) may not:

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

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

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

174 (ii) shall:

175 (A) provide for the implementation of the subtraction described in Subsection (2)(l);

176 (B) be in writing;

177 (C) be signed by:

178 (I) the governor; and

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

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

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

182 (c) (i) The governor shall report to the commission by no later than February 1 of each year

183 regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

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

187 (d) For purposes of Subsection (2)(1) and in accordance with Title 63, Chapter 46a, Utah
188 Administrative Rulemaking Act, the commission may make rules:

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

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

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

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

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

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

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

206 (i) the lesser of:

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

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

209 (I) the child's taxable interest;

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

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

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

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

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

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

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

223 (i) the entity; or

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

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

226 Section 2. **Retrospective operation.**

227 This act has retrospective operation for taxable years beginning on or after January 1, 2002.

Legislative Review Note

as of 12-10-01 8:11 AM

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

Office of Legislative Research and General Counsel