

1                                   **INDIVIDUAL INCOME TAX - ADOPTION**  
2   **EXPENSES**

3   2003 GENERAL SESSION  
4   STATE OF UTAH

5   **Sponsor: Carlene M. Walker**

6   **This act modifies the Individual Income Tax Act to allow an individual to choose from**  
7   **specified options the taxable year for which the individual may subtract adoption**  
8   **expenses from federal taxable income. This act has retrospective operation for taxable**  
9   **years beginning on or after January 1, 2003.**

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

11 AMENDS:

12           **59-10-103**, as last amended by Chapter 257, Laws of Utah 2000

13           **59-10-114**, as last amended by Chapter 211, Laws of Utah 2002

14           **59-10-133**, as enacted by Chapter 327, Laws of Utah 2001

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

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

17           **59-10-103. Definitions.**

18           (1) As used in this chapter:

19           (a) "Adoption expenses" means:

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

22           (ii) any welfare agency fees or costs;

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

24           (iv) any legal fees or costs; or

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

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

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



28 (ii) is eligible for services under Title 62A, Chapter 5, Services to People with  
29 Disabilities; and  
30 (iii) is not enrolled in:  
31 (A) an education program for students with disabilities that is authorized under Section  
32 53A-15-301; or  
33 (B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.  
34 ~~[(b)]~~ (c) "Corporation" includes associations, joint stock companies, and insurance  
35 companies.  
36 ~~[(c)]~~ (d) "Dependent child with a disability" means an individual 21 years of age or  
37 younger who:  
38 (i) (A) is diagnosed by a school district representative under rules adopted by the State  
39 Board of Education as having a disability classified as:  
40 (I) autism;  
41 (II) deafness;  
42 (III) preschool developmental delay;  
43 (IV) dual sensory impairment;  
44 (V) hearing impairment;  
45 (VI) intellectual disability;  
46 (VII) multidisability;  
47 (VIII) orthopedic impairment;  
48 (IX) other health impairment;  
49 (X) traumatic brain injury; or  
50 (XI) visual impairment;  
51 (B) is not receiving residential services from:  
52 (I) the Division of Services for People with Disabilities created under Section  
53 62A-5-102; or  
54 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;  
55 and  
56 (C) is enrolled in:  
57 (I) an education program for students with disabilities that is authorized under Section  
58 53A-15-301; or

59 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;  
60 or

61 (ii) is identified under guidelines of the Department of Health as qualified for:

62 (A) Early Intervention; or

63 (B) Infant Development Services.

64 [~~(e)~~] (e) "Employer," "employee," and "wages" are defined as provided in Section  
65 59-10-401.

66 [~~(f)~~] (f) "Fiduciary" means a guardian, trustee, executor, administrator, receiver,  
67 conservator, or any person acting in any fiduciary capacity for any individual.

68 [~~(g)~~] (g) "Homesteaded land diminished from the Uintah and Ouray Reservation"  
69 means the homesteaded land that was held to have been diminished from the Uintah and Ouray  
70 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

71 [~~(h)~~] (h) "Individual" means a natural person and includes aliens and minors.

72 [~~(i)~~] (i) "Nonresident individual" means an individual who is not a resident of this  
73 state.

74 [~~(j)~~] (j) "Nonresident trust" or "nonresident estate" means a trust or estate which is not  
75 a resident estate or trust.

76 [~~(k)~~] (k) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other  
77 unincorporated organization, through or by means of which any business, financial operation,  
78 or venture is carried on, and which is not, within the meaning of this chapter, a trust or estate or  
79 a corporation.

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

82 (iii) "Partner" includes a member in such a syndicate, group, pool, joint venture, or  
83 organization.

84 [~~(l)~~] (l) "Resident individual" means:

85 (i) an individual who is domiciled in this state for any period of time during the taxable  
86 year, but only for the duration of such period; or

87 (ii) an individual who is not domiciled in this state but maintains a permanent place of  
88 abode in this state and spends in the aggregate 183 or more days of the taxable year in this  
89 state. For purposes of this Subsection (1)[~~(k)~~](l)(ii), a fraction of a calendar day shall be

90 counted as a whole day.

91 [~~(h)~~] (m) (i) "Resident estate" or "resident trust" means:

92 (A) an estate of a decedent who at his death was domiciled in this state;

93 (B) a trust, or a portion of a trust, consisting of property transferred by will of a

94 decedent who at his death was domiciled in this state; or

95 (C) a trust administered in this state.

96 (ii) For purposes of this chapter, a trust shall be considered to be administered in this  
97 state if:

98 (A) the place of business where the fiduciary transacts a major portion of its  
99 administration of the trust is in this state; or

100 (B) the usual place of business of the fiduciary is in this state.

101 (iii) Where there are two or more fiduciaries, the residency status of the trust shall be  
102 determined by the situs of the corporate or professional fiduciary with primary responsibility  
103 for the administration of the trust as defined in the trust instrument.

104 (iv) The commission may, by rule, provide additional guidelines to determine the  
105 residency status of a trust.

106 [~~(m)~~] (n) "Taxable income" and "state taxable income" are defined as provided in  
107 Sections 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

108 [~~(n)~~] (o) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or  
109 trust, whose income is subject in whole or part to the tax imposed by this chapter.

110 [~~(o)~~] (p) "Uintah and Ouray Reservation" means the lands recognized as being included  
111 within the Uintah and Ouray Reservation in:

112 (i) Hagen v. Utah, 510 U.S. 399 (1994); and

113 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

114 [~~(p)~~] (q) "Ute tribal member" means a person who is enrolled as a member of the Ute  
115 Indian Tribe of the Uintah and Ouray Reservation.

116 [~~(q)~~] (r) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

117 (2) Any term used in this chapter has the same meaning as when used in comparable  
118 context in the laws of the United States relating to federal income taxes unless a different  
119 meaning is clearly required. Any reference to the Internal Revenue Code or to the laws of the  
120 United States shall mean the Internal Revenue Code or other provisions of the laws of the

121 United States relating to federal income taxes which are in effect for the taxable year. Any  
122 reference to a specific section of the Internal Revenue Code or other provision of the laws of  
123 the United States relating to federal income taxes shall include any corresponding or  
124 comparable provisions of the Internal Revenue Code as hereafter amended, redesignated, or  
125 reenacted.

126 Section 2. Section **59-10-114** is amended to read:

127 **59-10-114. Additions to and subtractions from federal taxable income of an**  
128 **individual.**

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

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

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

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

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

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

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

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

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

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

151 (f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education

152 Savings Incentive Program, in the year in which the amount is refunded; and

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

157 (i) a state other than this state;

158 (ii) the District of Columbia;

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

160 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through  
161 (iii).

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

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

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

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

182 (c) the amount of adoption expenses [~~which, for purposes of this Subsection (2)(c);~~

183 ~~means any actual medical and hospital expenses of the mother of the adopted child which are~~  
184 ~~incident to the child's birth and any welfare agency, child placement service, legal, and other~~  
185 ~~fees or costs relating to the adoption;] for one of the following taxable years as elected by the~~  
186 resident or nonresident individual:

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

189 (A) paid; or

190 (B) incurred;

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

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

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

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

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

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

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

212 (i) for:

213 (A) the taxpayer;

214 (B) the taxpayer's spouse; and  
215 (C) the taxpayer's dependents; and  
216 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or  
217 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

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

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

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

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

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

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

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

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



- 245 (l) for taxable years beginning on or after January 1, 2000, if the conditions of  
246 Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:
- 247 (i) during a time period that the Ute tribal member resides on homesteaded land  
248 diminished from the Uintah and Ouray Reservation; and
- 249 (ii) from a source within the Uintah and Ouray Reservation.
- 250 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted  
251 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or  
252 \$4,800, except that:
- 253 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income  
254 earned over \$32,000, the amount of the retirement income exemption that may be subtracted  
255 shall be reduced by 50 cents;
- 256 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income  
257 earned over \$16,000, the amount of the retirement income exemption that may be subtracted  
258 shall be reduced by 50 cents; and
- 259 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
260 \$25,000, the amount of the retirement income exemption that may be subtracted shall be  
261 reduced by 50 cents.
- 262 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption  
263 shall be further reduced according to the following schedule:
- 264 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income  
265 earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50  
266 cents;
- 267 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income  
268 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50  
269 cents; and
- 270 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
271 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.
- 272 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be  
273 calculated by adding to federal adjusted gross income any interest income not otherwise  
274 included in federal adjusted gross income.
- 275 (d) For purposes of determining ownership of items of retirement income common law

276 doctrine will be applied in all cases even though some items may have originated from service  
277 or investments in a community property state. Amounts received by the spouse of a living  
278 retiree because of the retiree's having been employed in a community property state are not  
279 deductible as retirement income of such spouse.

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

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

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

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

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

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

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

292 (i) may not:

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

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

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

297 (ii) shall:

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

299 (B) be in writing;

300 (C) be signed by:

301 (I) the governor; and

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

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

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

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

307 in effect.

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

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

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

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

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

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

320 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by  
321 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to  
322 2000 Form 8814 if for purposes of federal individual income taxes the information contained  
323 on 2000 Form 8814 is reported on a form other than Form 8814; and

324 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter  
325 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form  
326 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income  
327 taxes the information contained on 2000 Form 8814 is reported on a form other than Form  
328 8814.

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

331 (i) the lesser of:

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

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

334 (I) the child's taxable interest;

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

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

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

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

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

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

348 (i) the entity; or

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

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

351 Section 3. Section **59-10-133** is amended to read:

352 **59-10-133. Tax credits for special needs adoptions.**

353 (1) For purposes of this section, a "child who has a special need" means a child:

354 (a) for whom permanent custody has been awarded to the Utah Division of Child and  
355 Family Services[;];

356 (b) who cannot or should not be returned to the home of the child's biological  
357 parents[;]; and

358 (c) who meets at least one of the following conditions:

359 [~~(a)~~] (i) the child is five years of age or older;

360 [~~(b)~~] (ii) the child is under the age of 18 with a physical, emotional, or mental  
361 disability; or

362 [~~(c)~~] (iii) the child is a member of a sibling group placed together for adoption.

363 (2) For taxable years beginning on or after January 1, 2001, a taxpayer who adopts a  
364 child who has a special need may claim on the taxpayer's individual income tax return for the  
365 taxable year a refundable credit of \$1,000 against taxes otherwise due under this chapter for:

366 (a) adoptions for which a court issues an order granting the adoption on or after  
367 January 1, 2001;

368 (b) the taxable year during which a court issues an order granting the adoption; and

369 (c) each child who has a special need whom the taxpayer adopts.  
370 (3) The credit provided for in this section may not be carried forward or carried back.  
371 (4) Nothing in this section shall affect the ability of any taxpayer who adopts a child  
372 who has a special need to receive [~~financial aid for~~] adoption [~~expenses~~] assistance under  
373 Section [~~62A-4a-108~~] 62A-4a-907.  
374 Section 4. **Retrospective operation.**  
375 This act has retrospective operation for taxable years beginning on or after January 1,  
376 2003.

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**Legislative Review Note**  
as of 1-15-03 9:24 AM

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0118**

**Individual Income Tax - Adoption Expenses**

*23-Jan-03*

*8:55 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

While this legislation will not affect the amount of tax deductions, there may be some financial advantage to be able to choose from specified options the year in which the expense is deducted.

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**Office of the Legislative Fiscal Analyst**