

28 (b) (i) For purposes of Subsection 59-10-114(2)(m), "capital gain transaction" means a
29 transaction that results in a net capital gain.

30 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
31 the commission may by rule define the term "transaction."

32 (c) "Commercial domicile" means the principal place from which the trade or business
33 of a Utah small business corporation is directed or managed.

34 ~~(b)~~ (d) "Corporation" includes associations, joint stock companies, and insurance
35 companies.

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

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

68 ~~[(f)]~~ (h) "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 ~~[(g)]~~ (i) "Individual" means a natural person and includes aliens and minors.

72 (j) For purposes of Subsection 59-10-114(2)(m), "net capital gain" is as defined in
73 Section 1222, Internal Revenue Code.

74 ~~[(h)]~~ (k) "Nonresident individual" means an individual who is not a resident of this
75 state.

76 ~~[(i)]~~ (l) "Nonresident trust" or "nonresident estate" means a trust or estate which is not
77 a resident estate or trust.

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

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

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

86 ~~[(k)]~~ (n) "Resident individual" means:

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

89 (ii) an individual who is not domiciled in this state but maintains a permanent place of

90 abode in this state and spends in the aggregate 183 or more days of the taxable year in this
91 state. For purposes of this Subsection (1)~~(k)~~(n)(ii), a fraction of a calendar day shall be
92 counted as a whole day.

93 ~~(f)~~ (o) (i) "Resident estate" or "resident trust" means:

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

95 (B) a trust, or a portion of a trust, consisting of property transferred by will of a
96 decedent who at his death was domiciled in this state; or

97 (C) a trust administered in this state.

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

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

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

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

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

108 (p) "Qualifying stock" means stock that is:

109 (i) (A) common; or

110 (B) preferred;

111 (ii) as defined by the commission by rule, originally issued to:

112 (A) a resident or nonresident individual; or

113 (B) a partnership if the resident or nonresident individual making a subtraction from
114 federal taxable income in accordance with Subsection 59-10-114(2)(m):

115 (I) was a partner when the stock was issued; and

116 (II) remains a partner until the last day of the taxable year for which the resident or
117 nonresident individual makes the subtraction from federal taxable income in accordance with
118 Subsection 59-10-114(2)(m); and

119 (iii) issued:

120 (A) by a Utah small business corporation;

121 (B) on or after January 1, 2003; and

122 (C) for:

123 (I) money; or

124 (II) other property, except for stock or securities.

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

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

129 ~~[(o)]~~ (s) "Uintah and Ouray Reservation" means the lands recognized as being included
130 within the Uintah and Ouray Reservation in:

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

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

133 (t) (i) "Utah small business corporation" means a corporation that:

134 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue
135 Code;

136 (B) except as provided in Subsection (1)(t)(ii), meets the requirements of Section
137 1244(c)(1)(C), Internal Revenue Code; and

138 (C) has its commercial domicile in this state.

139 (ii) Notwithstanding Subsection (1)(t)(i)(B), the time period described in Section
140 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a
141 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the
142 resident or nonresident individual makes a subtraction from federal taxable income in
143 accordance with Subsection 59-10-114(2)(m).

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

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

147 (2) Any term used in this chapter has the same meaning as when used in comparable
148 context in the laws of the United States relating to federal income taxes unless a different
149 meaning is clearly required. Any reference to the Internal Revenue Code or to the laws of the
150 United States shall mean the Internal Revenue Code or other provisions of the laws of the
151 United States relating to federal income taxes which are in effect for the taxable year. Any

152 reference to a specific section of the Internal Revenue Code or other provision of the laws of
153 the United States relating to federal income taxes shall include any corresponding or
154 comparable provisions of the Internal Revenue Code as hereafter amended, redesignated, or
155 reenacted.

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

157 **59-10-114. Additions to and subtractions from federal taxable income of an**
158 **individual.**

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

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

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

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

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

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

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

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

178 (i) the taxpayer did not deduct or include the amounts on [~~his~~] the taxpayer's federal
179 individual income tax return pursuant to Section 220, Internal Revenue Code; and

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

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

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

- 187 (i) a state other than this state;
- 188 (ii) the District of Columbia;
- 189 (iii) a political subdivision of a state other than this state; or
- 190 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
191 (iii).

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

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

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

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

212 (c) the amount of adoption expenses which, for purposes of this Subsection (2)(c),
213 means any actual medical and hospital expenses of the mother of the adopted child which are

214 incident to the child's birth and any welfare agency, child placement service, legal, and other
215 fees or costs relating to the adoption;

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

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

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

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

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

234 (i) for:

235 (A) the taxpayer;

236 (B) the taxpayer's spouse; and

237 (C) the taxpayer's dependents; and

238 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
239 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

240 (i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a
241 contribution made during the taxable year on behalf of the taxpayer to a medical care savings
242 account and interest earned on a contribution to a medical care savings account established
243 pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the
244 contribution is accepted by the account administrator as provided in the Medical Care Savings

245 Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal
246 individual income tax return pursuant to Section 220, Internal Revenue Code; and

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

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

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

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

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

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

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

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

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

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

272 (m) (i) for taxable years beginning on or after January 1, 2003, the total amount of a
273 resident or nonresident individual's net capital gain on a capital gain transaction:

274 (A) that occurs on or after January 1, 2003;

275 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:

276 (I) to purchase qualifying stock in a Utah small business corporation; and
277 (II) within a 12-month period after the day on which the capital gain transaction occurs;
278 and

279 (C) if, prior to the purchase of the qualifying stock described in Subsection
280 (2)(m)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the
281 Utah small business corporation that issued the qualifying stock; and

282 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
283 commission may make rules:

284 (A) defining the term "gross proceeds"; and

285 (B) for purposes of Subsection (2)(m)(i)(C), prescribing the circumstances under which
286 a resident or nonresident individual has an ownership interest in a Utah small business
287 corporation.

288 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
289 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
290 \$4,800, except that:

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

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

297 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
298 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
299 reduced by 50 cents.

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

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

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

307 cents; and

308 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
309 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

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

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

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

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

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

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

330 (i) may not:

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

332 (B) provide a subtraction under this section greater than or different from the

333 subtraction described in Subsection (2)(l); or

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

335 (ii) shall:

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

337 (B) be in writing;

338 (C) be signed by:
339 (I) the governor; and
340 (II) the chair of the Business Committee of the Ute tribe;
341 (D) be conditioned on obtaining any approval required by federal law; and
342 (E) state the effective date of the agreement.

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

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

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

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

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

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

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

358 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
359 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
360 2000 Form 8814 if for purposes of federal individual income taxes the information contained
361 on 2000 Form 8814 is reported on a form other than Form 8814; and

362 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
363 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
364 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
365 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
366 8814.

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

369 (i) the lesser of:
 370 (A) the base amount specified on Form 8814; and
 371 (B) the sum of the following reported on Form 8814:
 372 (I) the child's taxable interest;
 373 (II) the child's ordinary dividends; and
 374 (III) the child's capital gain distributions; and
 375 (ii) the amount not taxed that is specified on Form 8814.
 376 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences
 377 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be
 378 added to federal taxable income of a resident or nonresident individual if, as annually
 379 determined by the commission:
 380 (a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the
 381 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
 382 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
 383 (b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose
 384 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
 385 this state:
 386 (i) the entity; or
 387 (ii) (A) the state in which the entity is located; or
 388 (B) the District of Columbia, if the entity is located within the District of Columbia.
 389 **Section 3. Retrospective operation.**
 390 This act has retrospective operation for taxable years beginning on or after January 1,
 391 2003.

Legislative Review Note
 as of 1-24-03 10:36 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0131

**Individual Income Tax - Subtractions from Federal
Taxable Income**

31-Jan-03
10:57 AM

State Impact

Any revenue impact would depend on the amount of capital gains taken and the related amount of reinvestment into the economy. The Tax Commission would require an appropriation of \$13,200 in FY 2004 to implement the provisions of this bill.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Uniform School Fund	\$13,200	\$0	\$0	\$0
TOTAL	\$13,200	\$0	\$0	\$0

Individual and Business Impact

Individuals with qualifying capital gains would receive a tax benefit. Small businesses would benefit from the reinvestment of funds into their organizations.

Office of the Legislative Fiscal Analyst