

**INDIVIDUAL INCOME TAX AMENDMENTS
FOR EDUCATION FUNDING**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Patricia W. Jones

Steven R. Mascaro

LONG TITLE

General Description:

This bill modifies the Individual Income Tax Act.

Highlighted Provisions:

This bill:

- ▶ modifies the state taxable income brackets and amounts of tax;
- ▶ requires the Utah State Tax Commission to adjust the state taxable income brackets and amounts of tax for inflation or deflation and to make certain other adjustments to the state taxable income brackets and amounts of tax;
- ▶ modifies the personal exemption amount that a resident or nonresident individual is required to add to federal taxable income;
- ▶ repeals a subtraction from federal taxable income for federal income tax paid that is made in calculating state individual income tax liability;
- ▶ provides for a nonrefundable state earned income tax credit that is equal to a certain percentage of the federal earned income tax credit; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

The bill takes effect for taxable years beginning on or after January 1, 2005.



Utah Code Sections Affected:

AMENDS:

53B-8a-106, as last amended by Chapter 144, Laws of Utah 2000

59-10-103, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

59-10-104, as last amended by Chapters 323 and 324, Laws of Utah 2001

59-10-114, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

59-10-201, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

59-10-205, as last amended by Chapter 345, Laws of Utah 1995

ENACTS:

59-10-136, Utah Code Annotated 1953

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

Section 1. Section **53B-8a-106** is amended to read:

53B-8a-106. Participation agreements for trust.

The trust may enter into participation agreements with participants on behalf of beneficiaries under the following terms and agreements:

(1) (a) Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary, not to exceed an amount determined by the board.

(b) Participation agreements may be amended to provide for adjusted levels of payments based upon changed circumstances or changes in educational plans.

(c) A participant may make additional optional payments as long as the total payments for a specific beneficiary do not exceed the total estimated higher education costs as determined by the board.

(d) The maximum amount of investments that may be subtracted from federal taxable income of a resident or nonresident individual under Subsection 59-10-114(2)(~~f~~)(i) shall be \$1,200 for each individual beneficiary for the 1996 calendar year and an amount adjusted annually thereafter to reflect increases in the Consumer Price Index.

(2) The participation agreement may include a minimum rate of return for the investment made by the participant.

(3) (a) Beneficiaries designated in participation agreements must be designated from

59 date of birth through age 18 for the participant to subtract allowable investments from federal
60 taxable income under Subsection 59-10-114(2)(~~g~~)(i).

61 (b) Participants may designate beneficiaries after age 18, but investments for those
62 beneficiaries are not eligible for subtraction from federal taxable income.

63 (4) Payment of benefits provided under participation agreements must begin not later
64 than the first full fall academic quarter or semester at an institution of higher education
65 following the 22nd birthday or high school graduation of the beneficiary, whichever is later,
66 unless the participant notifies the program administrator to the contrary.

67 (5) The execution of a participation agreement by the trust may not guarantee in any
68 way that higher education costs will be equal to projections and estimates provided by the trust
69 or that the beneficiary named in any participation agreement will:

70 (a) be admitted to an institution of higher education;

71 (b) if admitted, be determined a resident for tuition purposes by the institution of
72 higher education, unless the participation agreement is vested;

73 (c) be allowed to continue attendance at the institution of higher education following
74 admission; or

75 (d) graduate from the institution of higher education.

76 (6) Beneficiaries may be changed as permitted by the rules and regulations of the board
77 upon written request of the participant prior to the date of admission of any beneficiary under a
78 participation agreement by an institution of higher education so long as the substitute
79 beneficiary is eligible for participation.

80 (7) Participation agreements may be freely amended throughout their terms in order to
81 enable participants to increase or decrease the level of participation, change the designation of
82 beneficiaries, and carry out similar matters as authorized by rule.

83 (8) Each participation agreement shall provide that the participation agreement may be
84 canceled upon the terms and conditions, and upon payment of the fees and costs set forth and
85 contained in the board's rules and regulations.

86 Section 2. Section **59-10-103** is amended to read:

87 **59-10-103. Definitions.**

88 (1) As used in this chapter:

89 (a) "Adoption expenses" means:

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

(ii) any welfare agency fees or costs;

(iii) any child placement service fees or costs;

(iv) any legal fees or costs; or

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

(b) "Adult with a disability" means an individual who:

(i) is 18 years of age or older;

(ii) is eligible for services under Title 62A, Chapter 5, Services for People with Disabilities; and

(iii) is not enrolled in:

(A) an education program for students with disabilities that is authorized under Section 53A-15-301; or

(B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.

(c) (i) For purposes of Subsection 59-10-114(2)(~~mm~~)(l), "capital gain transaction" means a transaction that results in a:

(A) short-term capital gain; or

(B) long-term capital gain.

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

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

(e) "Corporation" includes:

(i) associations;

(ii) joint stock companies; and

(iii) insurance companies.

(f) "Dependent child with a disability" means an individual 21 years of age or younger who:

(i) (A) is diagnosed by a school district representative under rules adopted by the State Board of Education as having a disability classified as:

(I) autism;

- 121 (II) deafness;
- 122 (III) preschool developmental delay;
- 123 (IV) dual sensory impairment;
- 124 (V) hearing impairment;
- 125 (VI) intellectual disability;
- 126 (VII) multidisability;
- 127 (VIII) orthopedic impairment;
- 128 (IX) other health impairment;
- 129 (X) traumatic brain injury; or
- 130 (XI) visual impairment;
- 131 (B) is not receiving residential services from:
 - 132 (I) the Division of Services for People with Disabilities created under Section
 - 133 62A-5-102; or
 - 134 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
 - 135 and
 - 136 (C) is enrolled in:
 - 137 (I) an education program for students with disabilities that is authorized under Section
 - 138 53A-15-301; or
 - 139 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
 - 140 or
 - 141 (ii) is identified under guidelines of the Department of Health as qualified for:
 - 142 (A) Early Intervention; or
 - 143 (B) Infant Development Services.
 - 144 (g) "Employer," "employee," and "wages" are defined as provided in Section
 - 145 59-10-401.
 - 146 (h) "Fiduciary" means:
 - 147 (i) a guardian;
 - 148 (ii) a trustee;
 - 149 (iii) an executor;
 - 150 (iv) an administrator;
 - 151 (v) a receiver;

(vi) a conservator; or

(vii) any person acting in any fiduciary capacity for any individual.

(i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).

(j) "Individual" means a natural person and includes aliens and minors.

(k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke or terminate all or part of the trust.

(l) For purposes of Subsection 59-10-114(2)(~~m~~)(l), "long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(m) "Nonresident individual" means an individual who is not a resident of this state.

(n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a resident estate or trust.

(o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization:

(A) through or by means of which any business, financial operation, or venture is carried on; and

(B) which is not, within the meaning of this chapter:

(I) a trust;

(II) an estate; or

(III) a corporation.

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

(iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or organization described in Subsection (1)(o)(i).

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

(i) (A) common; or

(B) preferred;

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

- 183 (A) a resident or nonresident individual; or
- 184 (B) a partnership if the resident or nonresident individual making a subtraction from
- 185 federal taxable income in accordance with Subsection 59-10-114(2)[~~(m)~~](l):
- 186 (I) was a partner when the stock was issued; and
- 187 (II) remains a partner until the last day of the taxable year for which the resident or
- 188 nonresident individual makes the subtraction from federal taxable income in accordance with
- 189 Subsection 59-10-114(2)[~~(m)~~](l); and
- 190 (iii) issued:
- 191 (A) by a Utah small business corporation;
- 192 (B) on or after January 1, 2003; and
- 193 (C) for:
- 194 (I) money; or
- 195 (II) other property, except for stock or securities.
- 196 (q) (i) "Resident individual" means:
- 197 (A) an individual who is domiciled in this state for any period of time during the
- 198 taxable year, but only for the duration of the period during which the individual is domiciled in
- 199 this state; or
- 200 (B) an individual who is not domiciled in this state but:
- 201 (I) maintains a permanent place of abode in this state; and
- 202 (II) spends in the aggregate 183 or more days of the taxable year in this state.
- 203 (ii) For purposes of Subsection (1)(q)(i)(B), a fraction of a calendar day shall be
- 204 counted as a whole day.
- 205 (r) (i) "Resident estate" or "resident trust" means:
- 206 (A) an estate of a decedent who at death was domiciled in this state;
- 207 (B) a trust, or a portion of a trust, consisting of property transferred by will of a
- 208 decedent who at his death was domiciled in this state; or
- 209 (C) a trust administered in this state.
- 210 (ii) A trust shall be considered to be administered in this state if:
- 211 (A) the place of business where the fiduciary transacts a major portion of its
- 212 administration of the trust is in this state; or
- 213 (B) the trust states that this state is the place of administration, and any administration

of the trust is done in this state.

(s) For purposes of Subsection 59-10-114(2)~~(m)~~(l), "short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(t) "Taxable income" and "state taxable income" are defined as provided in Sections 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

(u) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or trust, whose income is subject in whole or part to the tax imposed by this chapter.

(v) "Uintah and Ouray Reservation" means the lands recognized as being included within the Uintah and Ouray Reservation in:

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

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

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

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

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

(C) has its commercial domicile in this state.

(ii) Notwithstanding Subsection (1)(w)(i)(B), the time period described in Section 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a corporation's aggregate gross receipts shall end on the last day of the taxable year for which the resident or nonresident individual makes a subtraction from federal taxable income in accordance with Subsection 59-10-114(2)~~(m)~~(l).

(x) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian Tribe of the Uintah and Ouray Reservation.

(y) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

(2) (a) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required.

(b) Any reference to the Internal Revenue Code or to the laws of the United States shall mean the Internal Revenue Code or other provisions of the laws of the United States relating to federal income taxes that are in effect for the taxable year.

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

Section 3. Section **59-10-104** is amended to read:

59-10-104. Tax basis -- Rates -- Exemption.

(1) Except as provided in Subsection (4), for taxable years beginning on or after January 1, ~~[2001]~~ 2005, a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual as provided in this section.

(2) For an individual, other than a husband and wife or head of household required to use the tax table under Subsection (3), the tax under this section is imposed in accordance with the following ~~[table]~~ brackets:

If the state taxable income is:	The tax is:
Less than or equal to [\$863] <u>\$1,640</u>	2.3% of the state taxable income
Greater than [\$863] <u>\$1,640</u> but less than or equal to [\$1,726] <u>\$3,280</u>	[\$20] <u>\$38</u> , plus 3.3% of state taxable income greater than [\$863] <u>\$1,640</u>
Greater than [\$1,726] <u>\$3,280</u> but less than or equal to [\$2,588] <u>\$4,920</u>	[\$48] <u>\$92</u> , plus 4.2% of state taxable income greater than [\$1,726] <u>\$3,280</u>
Greater than [\$2,588] <u>\$4,920</u> but less than or equal to [\$3,450] <u>\$6,560</u>	[\$85] <u>\$161</u> , plus 5.2% of state taxable income greater than [\$2,588] <u>\$4,920</u>
Greater than [\$3,450] <u>\$6,560</u> but less than or equal to [\$4,313] <u>\$8,200</u>	[\$129] <u>\$246</u> , plus 6% of state taxable income greater than [\$3,450] <u>\$6,560</u>
Greater than [\$4,313] <u>\$8,200</u>	[\$181] <u>\$344</u> , plus 7% of state taxable income greater than [\$4,313] <u>\$8,200</u>

(3) For a husband and wife filing a single return jointly, or a head of household as defined in Section 2(b), Internal Revenue Code, filing a single return, the tax under this section is imposed in accordance with the following ~~[table]~~ brackets:

If the state taxable income is:	The tax is:
Less than or equal to [\$1,726] <u>\$3,280</u>	2.3% of the state taxable income
Greater than [\$1,726] <u>\$3,280</u> but less than or equal to [\$3,450] <u>6,560</u>	[\$40] <u>\$75</u> , plus 3.3% of state taxable income greater than [\$1,726] <u>\$3,280</u>

276 Greater than [~~\$3,450~~] 6,560 but less than [~~\$97~~] \$184, plus 4.2% of state taxable
277 or equal to [~~\$5,176~~] \$9,840 income greater than [~~\$3,450~~] \$6,560
278 Greater than [~~\$5,176~~] \$9,840 but less than [~~\$169~~] \$321, plus 5.2% of state taxable
279 or equal to [~~\$6,900~~] \$13,120 income greater than [~~\$5,176~~] \$9,840
280 Greater than [~~\$6,900~~] \$13,120 but less than [~~\$259~~] \$492, plus 6% of state taxable
281 or equal to [~~\$8,626~~] \$16,400 income greater than [~~\$6,900~~] \$13,120
282 Greater than [~~\$8,626~~] \$16,400 [~~\$362~~] \$689, plus 7% of state taxable
283 income greater than [~~\$8,626~~] \$16,400
284 (4) (a) For taxable years beginning on or after January 1, 2006, the commission shall:
285 (i) make the following adjustments to the individual income tax brackets under
286 Subsection (3):
287 (A) increase or decrease the individual income tax brackets under Subsection (3) in a
288 percentage equal to the percentage difference between the consumer price index for the
289 preceding calendar year and the consumer price index for calendar year 2004; and
290 (B) after making an increase or decrease under Subsection (4)(a)(i)(A), round the
291 individual income tax brackets under Subsection (3) to the nearest \$100;
292 (ii) after making the adjustments described in Subsection (4)(a)(i) to the individual
293 income tax brackets under Subsection (3), adjust the individual income tax brackets under
294 Subsection (2) such that for each individual income tax bracket under Subsection (3) there is a
295 corresponding individual income tax bracket under Subsection (2) that is equal to 50% of each
296 individual income tax bracket under Subsection (3); and
297 (iii) to the extent necessary to reflect an adjustment under Subsection (4)(a)(i) or (ii),
298 increase or decrease the amount of tax under Subsection (2) or (3) prior to adding in the portion
299 of the tax calculated as a percentage of state taxable income.
300 (b) The commission may not increase or decrease the tax rate percentages provided in
301 Subsection (2) or (3).
302 (c) For purposes of Subsection (4)(a)(i), the commission shall calculate the consumer
303 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.
304 [~~(4)~~] (5) This section does not apply to a resident individual exempt from taxation
305 under Section 59-10-104.1.
306 Section 4. 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;]~~

(d) for taxable years beginning on or after January 1, 2005, the amounts calculated under Subsection (7);

(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 the taxpayer's federal individual income 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;

(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);

(h) any distribution received by a resident beneficiary of a resident trust of income that was taxed at the trust level for federal tax purposes, but was subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(c); and

(i) any distribution received by a resident beneficiary of a nonresident trust of income that was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by any state.

(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);]

~~[(e)]~~ (b) the amount of adoption expenses for one of the following taxable years as elected by the resident or nonresident individual:

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

(A) paid; or

(B) incurred;

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

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

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

~~[(f)]~~ (e) 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)]~~ (f) 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)]~~ (g) 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)]~~ (h) (i) except as otherwise provided in this Subsection (2)~~[(i)]~~(h), 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)]~~(h) 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)]~~(h)(ii)(A);

~~[(i)]~~ (i) 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) that is included in federal taxable income, but only when the funds are used for qualified higher education costs of the beneficiary;

~~[(k)]~~ (j) 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;

431 ~~[(b)]~~ (k) for taxable years beginning on or after January 1, 2000, if the conditions of
432 Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

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

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

436 ~~[(m)]~~ (l) (i) for taxable years beginning on or after January 1, 2003, the total amount of
437 a resident or nonresident individual's short-term capital gain or long-term capital gain on a
438 capital gain transaction:

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

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

441 (I) to purchase qualifying stock in a Utah small business corporation; and

442 (II) within a 12-month period after the day on which the capital gain transaction occurs;

443 and

444 (C) if, prior to the purchase of the qualifying stock described in Subsection
445 (2)~~[(m)]~~(l)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in
446 the Utah small business corporation that issued the qualifying stock; and

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

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

450 (B) for purposes of Subsection (2)~~[(m)]~~(l)(i)(C), prescribing the circumstances under
451 which a resident or nonresident individual has an ownership interest in a Utah small business
452 corporation.

453 (3) (a) For purposes of Subsection (2)~~[(b)]~~(c), the amount of retirement income
454 subtracted for taxpayers under 65 shall be the lesser of the amount included in federal taxable
455 income, or \$4,800, except that:

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

459 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
460 earned over \$16,000, the amount of the retirement income exemption that may be subtracted
461 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~~)(d), 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~~)(g), 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)(~~h~~)(k) is allowed only if:

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

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

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

496 (i) may not:

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

498 (B) provide a subtraction under this section greater than or different from the
499 subtraction described in Subsection (2)[~~(f)~~](k); or

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

501 (ii) shall:

502 (A) provide for the implementation of the subtraction described in Subsection
503 (2)[~~(f)~~](k);

504 (B) be in writing;

505 (C) be signed by:

506 (I) the governor; and

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

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

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

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

513 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
514 subtraction permitted under Subsection (2)[~~(f)~~](k) is not allowed for taxable years beginning on
515 or after the January 1 following the termination of the agreement.

516 (d) For purposes of Subsection (2)[~~(f)~~](k) and in accordance with Title 63, Chapter 46a,
517 Utah Administrative Rulemaking Act, the commission may make rules:

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

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

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

523 (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.

(7) (a) For purposes of Subsection (1)(d) and this Subsection (7):

(i) "disabled person" means:

(A) a dependent child with a disability; or

(B) an adult with a disability;

(ii) "personal exemption" means a personal exemption:

(A) under Section 151, Internal Revenue Code; and

(B) for:

(I) an individual;

(II) if the individual has a spouse, the individual's spouse; and

(III) if the individual has one or more dependents, the individual's dependents;

(iii) "personal exemption amount" means an amount calculated by dividing the personal exemption value by the personal exemptions claimed;

(iv) "personal exemptions claimed" means the total number of personal exemptions a resident or nonresident individual claimed:

(A) on the resident or nonresident individual's federal individual income tax return; and

(B) for the same taxable year as the taxable year for which the resident or nonresident individual is filing a tax return under this chapter;

(v) "personal exemptions claimed for disabled persons" means the total number of personal exemptions a resident or nonresident individual claimed:

(A) for:

(I) if the individual is a disabled person, the individual;

(II) if the individual's spouse is a disabled person, the individual's spouse; and

(III) if one or more of the individual's dependents is disabled, the number of dependents who are disabled;

(B) on the resident or nonresident individual's federal individual income tax return; and

(C) for the same taxable year as the taxable year for which the resident or nonresident individual is filing a tax return under this chapter;

(vi) "personal exemptions remaining" means the number of personal exemptions by which the personal exemptions claimed exceed the personal exemptions claimed for disabled persons; and

(vii) "personal exemption value" means the total dollar amount a resident or nonresident individual is allowed for the personal exemptions claimed:

(A) on the resident or nonresident individual's federal individual income tax return for the same taxable year as the taxable year for which the resident or nonresident individual is filing a tax return under this chapter; and

(B) under Section 151, Internal Revenue Code.

(b) For purposes of Subsection (1)(d), a resident or nonresident individual shall add the following amounts to the resident or nonresident individual's federal taxable income for a taxable year:

(i) the product of:

(A) the personal exemptions claimed for disabled persons;

(B) the personal exemption amount; and

(C) .25; and

(ii) for any personal exemptions remaining, the sum of:

(A) for the first personal exemption remaining, the product of:

(I) the personal exemption amount; and

(II) .25;

(B) for the second personal exemption remaining, the product of:

(I) the personal exemption amount; and

(II) .25;

(C) for the third personal exemption remaining, the product of:

(I) the personal exemption amount; and

(II) .5;

(D) for the fourth personal exemption remaining, the product of:

(I) the personal exemption amount; and

(II) .75; and

(E) for any personal exemptions that exceed the fourth personal exemption remaining, the product of:

(I) the number of personal exemptions that exceed the fourth personal exemption remaining; and

(II) the personal exemption amount.

Section 5. Section **59-10-136** is enacted to read:

59-10-136. Nonrefundable earned income tax credit.

(1) For taxable years beginning on or after January 1, 2005, a taxpayer may claim as provided in this section a nonrefundable earned income tax credit equal to 5% of the amount the taxpayer is allowed as a federal earned income tax credit in accordance with Section 32, Internal Revenue Code, for the taxable year.

(2) A taxpayer may not carry forward or carry back any earned income tax credit allowed under this section.

Section 6. Section **59-10-201** is amended to read:

59-10-201. Taxation of resident trusts and estates.

(1) A tax determined in accordance with the [rates] brackets prescribed by Section 59-10-104 for individuals filing separately is imposed for each taxable year on the state taxable income of each resident estate or trust, except for trusts taxed as corporations.

(2) A resident estate or trust shall be allowed the credit provided in Section 59-10-106, relating to an income tax imposed by another state, except that the limitation shall be computed by reference to the taxable income of the estate or trust.

(3) The property of the trusts established in Title 53B, Chapter 8a, Higher Education Savings Incentive Program, and Title 53B, Chapter 8b, Higher Education Supplemental Savings Incentive Program, and their income from operations and investments are exempt from all taxation by the state under this chapter.

Section 7. Section **59-10-205** is amended to read:

59-10-205. Tax on income derived from Utah sources.

(1) A tax is imposed on the state taxable income, as defined in Section 59-10-204, of every nonresident estate or trust in accordance with the [rates] brackets prescribed in Section 59-10-104 for individuals filing separately.

(2) The tax shall only be applied to income derived from Utah sources as adjusted by Section 59-10-207, including such items from another estate or trust of which the first estate or trust is a beneficiary.

Section 8. **Effective date.**

This bill takes effect for taxable years beginning on or after January 1, 2005.

Legislative Review Note
as of 11-4-03 12:30 PM

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 HB0045****Individual Income Tax Amendments for Education****Funding***17-Jan-04**5:15 PM*

State Impact

Passage of this bill could increase the Uniform School Fund by \$79,000,000 in FY 2006.
The Tax Commission would require an appropriation of \$36,800 to implement the provisions of the bill.

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2005</u>	<u>FY 2006</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>
Uniform School Fund	\$0	\$36,800	\$0	\$79,000,000
TOTAL	\$0	\$36,800	\$0	\$79,000,000

Individual and Business Impact

Individual impact will be dependent on the number of children claimed and income levels.

Office of the Legislative Fiscal Analyst