

**INDIVIDUAL INCOME TAX - TREATMENT
OF CERTAIN MILITARY INCOME**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Darin G. Peterson

LONG TITLE

General Description:

This bill amends the Individual Income Tax Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides a subtraction from federal taxable income for certain income a servicemember receives for qualifying military service;
- ▶ grants rulemaking authority to the State Tax Commission; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for taxable years beginning on or after January 1, 2004.

Utah Code Sections Affected:

AMENDS:

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

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

75-7-202, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

75-7-208, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session



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

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

59-10-103. Definitions.

(1) As used in this chapter:

(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)(m), "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

59 (iii) insurance companies.

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

61 who:

62 (i) (A) is diagnosed by a school district representative under rules adopted by the State

63 Board of Education as having a disability classified as:

64 (I) autism;

65 (II) deafness;

66 (III) preschool developmental delay;

67 (IV) dual sensory impairment;

68 (V) hearing impairment;

69 (VI) intellectual disability;

70 (VII) multidisability;

71 (VIII) orthopedic impairment;

72 (IX) other health impairment;

73 (X) traumatic brain injury; or

74 (XI) visual impairment;

75 (B) is not receiving residential services from:

76 (I) the Division of Services for People with Disabilities created under Section

77 62A-5-102; or

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

79 and

80 (C) is enrolled in:

81 (I) an education program for students with disabilities that is authorized under Section

82 53A-15-301; or

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

84 or

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

86 (A) Early Intervention; or

87 (B) Infant Development Services.

88 (g) "Employee" is as defined in Section 59-10-401.

89 [~~(g)~~] (h) "Employer[;]" ["employee," and "wages" are defined as provided] is as

90 defined in Section 59-10-401.

91 ~~[(h)]~~ (i) "Fiduciary" means:

92 (i) a guardian;

93 (ii) a trustee;

94 (iii) an executor;

95 (iv) an administrator;

96 (v) a receiver;

97 (vi) a conservator; or

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

99 ~~[(i)]~~ (j) "Homesteaded land diminished from the Uintah and Ouray Reservation" means

100 the homesteaded land that was held to have been diminished from the Uintah and Ouray

101 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

102 ~~[(j)]~~ (k) "Individual" means a natural person and includes aliens and minors.

103 ~~[(k)]~~ (l) "Irrevocable trust" means a trust in which the settlor may not revoke or

104 terminate all or part of the trust without the consent of a person who has a substantial beneficial

105 interest in the trust and the interest would be adversely affected by the exercise of the settlor's

106 power to revoke or terminate all or part of the trust.

107 ~~[(l)]~~ (m) For purposes of Subsection 59-10-114(2)(m), "long-term capital gain" is as

108 defined in Section 1222, Internal Revenue Code.

109 (n) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.

110 ~~[(m)]~~ (o) "Nonresident individual" means an individual who is not a resident of this

111 state.

112 ~~[(n)]~~ (p) "Nonresident trust" or "nonresident estate" means a trust or estate which is not

113 a resident estate or trust.

114 ~~[(o)]~~ (q) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other

115 unincorporated organization:

116 (A) through or by means of which any business, financial operation, or venture is

117 carried on; and

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

119 (I) a trust;

120 (II) an estate; or

- 121 (III) a corporation.
- 122 (ii) "Partnership" does not include any organization not included under the definition of
123 "partnership" in Section 761, Internal Revenue Code.
- 124 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
125 organization described in Subsection (1)~~(p)~~(q)(i).
- 126 (r) "Qualifying military service" means military service performed by a
127 servicemember:
- 128 (i) in compliance with military orders; and
129 (ii) if that servicemember was not performing full-time military service before the day
130 on which the servicemember received the orders described in Subsection (1)(r)(i).
- 131 ~~(p)~~ (s) "Qualifying stock" means stock that is:
- 132 (i) (A) common; or
133 (B) preferred;
- 134 (ii) as defined by the commission by rule, originally issued to:
- 135 (A) a resident or nonresident individual; or
136 (B) a partnership if the resident or nonresident individual making a subtraction from
137 federal taxable income in accordance with Subsection 59-10-114(2)(m):
- 138 (I) was a partner when the stock was issued; and
139 (II) remains a partner until the last day of the taxable year for which the resident or
140 nonresident individual makes the subtraction from federal taxable income in accordance with
141 Subsection 59-10-114(2)(m); and
- 142 (iii) issued:
- 143 (A) by a Utah small business corporation;
144 (B) on or after January 1, 2003; and
145 (C) for:
- 146 (I) money; or
147 (II) other property, except for stock or securities.
- 148 ~~(q)~~ (t) (i) "Resident individual" means:
- 149 (A) an individual who is domiciled in this state for any period of time during the
150 taxable year, but only for the duration of the period during which the individual is domiciled in
151 this state; or

152 (B) an individual who is not domiciled in this state but:
153 (I) maintains a permanent place of abode in this state; and
154 (II) spends in the aggregate 183 or more days of the taxable year in this state.
155 (ii) For purposes of Subsection (1)~~(t)~~(t)(i)(B), a fraction of a calendar day shall be
156 counted as a whole day.

157 ~~(t)~~ (u) (i) "Resident estate" or "resident trust" means:
158 (A) an estate of a decedent who at death was domiciled in this state;
159 (B) a trust, or a portion of a trust, consisting of property transferred by will of a
160 decedent who at his death was domiciled in this state; or
161 (C) a trust administered in this state.
162 (ii) A trust shall be considered to be administered in this state if:
163 (A) the place of business where the fiduciary transacts a major portion of its
164 administration of the trust is in this state; or
165 (B) the trust states that this state is the place of administration, and any administration
166 of the trust is done in this state.

167 (v) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.
168 ~~(s)~~ (w) For purposes of Subsection 59-10-114(2)(m), "short-term capital gain" is as
169 defined in Section 1222, Internal Revenue Code.

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

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

174 ~~(v)~~ (z) "Uintah and Ouray Reservation" means the lands recognized as being included
175 within the Uintah and Ouray Reservation in:
176 (i) Hagen v. Utah, 510 U.S. 399 (1994); and
177 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

178 ~~(w)~~ (aa) (i) "Utah small business corporation" means a corporation that:
179 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue
180 Code;
181 (B) except as provided in Subsection (1)~~(w)~~(aa)(ii), meets the requirements of
182 Section 1244(c)(1)(C), Internal Revenue Code; and

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

184 (ii) Notwithstanding Subsection (1)[~~(w)~~](aa)(i)(B), the time period described in Section
185 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a
186 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the
187 resident or nonresident individual makes a subtraction from federal taxable income in
188 accordance with Subsection 59-10-114(2)(m).

189 [~~(x)~~] (bb) "Ute tribal member" means a person who is enrolled as a member of the Ute
190 Indian Tribe of the Uintah and Ouray Reservation.

191 [~~(y)~~] (cc) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.
192 (dd) "Wages" is as defined in Section 59-10-401.

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

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

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

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

204 **59-10-114. Additions to and subtractions from federal taxable income of an**
205 **individual.**

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

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

213 (b) a lump sum distribution that the taxpayer does not include in adjusted gross income

214 on the taxpayer's federal individual income tax return for the taxable year;

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

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

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

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

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

225 (i) the taxpayer did not deduct or include the amounts on the taxpayer's federal
226 individual income tax return pursuant to Section 220, Internal Revenue Code; and

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

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

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

234 (i) a state other than this state;

235 (ii) the District of Columbia;

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

237 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
238 (iii);

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

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

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

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

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

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

265 (c) the amount of adoption expenses for one of the following taxable years as elected
266 by the resident or nonresident individual:

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

269 (A) paid; or

270 (B) incurred;

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

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

274 (d) amounts received by taxpayers under age 65 as retirement income which, for
275 purposes of this section, means pensions and annuities, paid from an annuity contract

276 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),
277 Internal Revenue Code, or purchased by an employee under a plan which meets the
278 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or
279 political subdivision thereof, or the District of Columbia, to the employee involved or the
280 surviving spouse;

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

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

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

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

292 (i) for:

293 (A) the taxpayer;

294 (B) the taxpayer's spouse; and

295 (C) the taxpayer's dependents; and

296 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
297 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

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

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

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

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

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

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

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

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

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

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

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

330 (m) (i) for taxable years beginning on or after January 1, 2003, the total amount of a
331 resident or nonresident individual's short-term capital gain or long-term capital gain on a
332 capital gain transaction:

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

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

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

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

337 and

338 (C) if, prior to the purchase of the qualifying stock described in Subsection
339 (2)(m)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the
340 Utah small business corporation that issued the qualifying stock; and
341 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
342 commission may make rules:
343 (A) defining the term "gross proceeds"; and
344 (B) for purposes of Subsection (2)(m)(i)(C), prescribing the circumstances under which
345 a resident or nonresident individual has an ownership interest in a Utah small business
346 corporation[?]; and
347 (n) (i) except as provided in Subsection (2)(n)(ii), for taxable years beginning on or
348 after January 1, 2004, income a resident or nonresident individual who is a servicemember
349 receives:
350 (A) for qualifying military service; and
351 (B) to the extent that income is included in adjusted gross income on that
352 servicemember's federal individual income tax return for the taxable year;
353 (ii) notwithstanding Subsection (2)(n)(i), a subtraction from federal taxable income is
354 not allowed under Subsection (2)(n)(i) for the following received by a servicemember:
355 (A) retirement:
356 (I) income; or
357 (II) benefits; or
358 (B) survivor benefits; and
359 (iii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
360 for purposes of Subsection (2)(n)(i) the commission may by rule define what constitutes
361 income a servicemember receives for qualifying military service.
362 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
363 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
364 \$4,800, except that:
365 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
366 earned over \$32,000, the amount of the retirement income exemption that may be subtracted
367 shall be reduced by 50 cents;
368 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income

369 earned over \$16,000, the amount of the retirement income exemption that may be subtracted
370 shall be reduced by 50 cents; and

371 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
372 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
373 reduced by 50 cents.

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

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

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

382 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
383 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

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

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

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

- 400 (i) the taxpayer is a Ute tribal member; and
- 401 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
- 402 requirements of this Subsection (4).
- 403 (b) The agreement described in Subsection (4)(a):
- 404 (i) may not:
- 405 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 406 (B) provide a subtraction under this section greater than or different from the
- 407 subtraction described in Subsection (2)(l); or
- 408 (C) affect the power of the state to establish rates of taxation; and
- 409 (ii) shall:
- 410 (A) provide for the implementation of the subtraction described in Subsection (2)(l);
- 411 (B) be in writing;
- 412 (C) be signed by:
- 413 (I) the governor; and
- 414 (II) the chair of the Business Committee of the Ute tribe;
- 415 (D) be conditioned on obtaining any approval required by federal law; and
- 416 (E) state the effective date of the agreement.
- 417 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 418 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
- 419 in effect.
- 420 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 421 subtraction permitted under Subsection (2)(l) is not allowed for taxable years beginning on or
- 422 after the January 1 following the termination of the agreement.
- 423 (d) For purposes of Subsection (2)(l) and in accordance with Title 63, Chapter 46a,
- 424 Utah Administrative Rulemaking Act, the commission may make rules:
- 425 (i) for determining whether income is derived from a source within the Uintah and
- 426 Ouray Reservation; and
- 427 (ii) that are substantially similar to how federal adjusted gross income derived from
- 428 Utah sources is determined under Section 59-10-117.
- 429 (5) (a) For purposes of this Subsection (5), "Form 8814" means:
- 430 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's

431 Interest and Dividends; or

432 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
433 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
434 2000 Form 8814 if for purposes of federal individual income taxes the information contained
435 on 2000 Form 8814 is reported on a form other than Form 8814; and

436 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
437 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
438 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
439 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
440 8814.

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

443 (i) the lesser of:

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

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

446 (I) the child's taxable interest;

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

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

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

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

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

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

460 (i) the entity; or

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

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

463 Section 3. Section **75-7-202** is amended to read:

464 **75-7-202. Effect of administration in this state -- Consent to jurisdiction.**

465 (1) The trustee submits personally to the jurisdiction of the courts of this state
466 regarding any matter involving the trust if the trustee acts as trustee of a trust administered in
467 this state.

468 (2) To the extent of the beneficial interests in a trust administered in this state, the
469 beneficiaries of the trust are subject to the jurisdiction of the courts of this state regarding any
470 matter involving the trust. By accepting a distribution from such a trust, the recipient submits
471 personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

472 (3) By accepting the delegation of a trust function from the trustee of a trust
473 administered in this state, the agent submits to the jurisdiction of the courts of this state
474 regarding any matter involving the trust.

475 (4) Unless otherwise designated in the trust instrument, a trust is administered in this
476 state if it meets the requirements of Subsection 59-10-103(1)[(†)] (u)(ii).

477 Section 4. Section **75-7-208** is amended to read:

478 **75-7-208. Governing law.**

479 (1) For purposes of this section:

480 (a) "Foreign trust" means a trust that is created in another state or country and valid in
481 the state or country in which the trust is created.

482 (b) "State law provision" means a provision that the laws of a named state govern the
483 validity, construction, and administration of a trust.

484 (2) If a trust has a state law provision specifying this state, the validity, construction,
485 and administration of the trust are to be governed by the laws of this state if any administration
486 of the trust is done in this state.

487 (3) For all trusts created on or after December 31, 2003, if a trust does not have a state
488 law provision, the validity, construction, and administration of the trust are to be governed by
489 the laws of this state if the trust is administered in this state.

490 (4) If a foreign trust is administered in this state as provided in this section, the
491 following provisions are effective and enforceable under the laws of this state:

492 (a) a provision in the trust that restricts the transfer of trust assets in a manner similar

493 to Section 25-6-14;

494 (b) a provision that allows the trust to be perpetual; or

495 (c) a provision that is not expressly prohibited by the law of this state.

496 (5) A foreign trust that moves its administration to this state is valid whether or not the
497 trust complied with the laws of this state at the time of the trust's creation or after the trust's
498 creation.

499 (6) Unless otherwise designated in the trust instrument, a trust is administered in this
500 state if it meets the requirements of Subsection 59-10-103(1)[(†)] (u)(ii).

501 Section 5. **Retrospective operation.**

502 This bill has retrospective operation for taxable years beginning on or after January 1,
503 2004.

Legislative Review Note

as of 1-26-04 5:12 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 HB0117**Individual Income Tax-Treatment of Certain Military
Income***04-Feb-04
10:45 AM*

State Impact

Passage of this bill could decrease the Uniform School Fund by \$5,000,000 annually.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
Uniform School Fund	\$0	\$0	(\$5,000,000)	(\$5,000,000)
TOTAL	\$0	\$0	(\$5,000,000)	(\$5,000,000)

Individual and Business Impact

Eligible individuals would be exempt from income tax payments.

Office of the Legislative Fiscal Analyst