

TUITION TAX CREDITS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: James A. Ferrin

LONG TITLE**General Description:**

This bill modifies Corporate Franchise and Income Taxes and the Individual Income Tax Act to provide for tax credits for amounts paid to a private school for tuition or for contributions to a scholarship granting organization to be used for tuition grants for students attending a private school.

Highlighted Provisions:

This bill:

► provides a nonrefundable tax credit against corporate franchise and income tax or individual income tax for contributions to a scholarship granting organization that will be used to make tuition grants to qualifying students to attend private school as follows:

- a qualifying student may receive a tuition grant from only one scholarship granting organization each year;
- the tuition grant may not exceed 50% of the qualifying student's tuition, up to a maximum of \$2,000;
- a qualifying student is an individual who was not enrolled in a private school on January 1, 2004, is not enrolled in kindergarten in a private school in the 2004-05 school year, and who qualifies for reduced price school meals; and
- the private school shall annually assess the achievement of each qualifying student and provide information to parents on teacher credentials and school accreditation;



28 ▶ provides a refundable tax credit against individual income tax for amounts paid to a
29 private school for tuition on behalf of a qualifying student as follows:

30 • the qualifying student on whose behalf a tax credit is made may also be a
31 recipient of a tuition grant from a scholarship funding organization;
32 • the tax credit is limited to the lesser of 50% of tuition expenses, up to maximum
33 of \$2,000, or \$3,000 minus the total amount of tuition grants received;

34 • a qualifying student is an individual who was not in a private school on January
35 1, 2004 and is not enrolled in kindergarten in a private school in the 2004-05
36 school year; and

37 • the private school shall annually assess the achievement of each qualifying
38 student and provide information to parents on teachers credentials and school
39 accreditation;

40 ▶ provides that, in determining corporate franchise or income tax, contributions to a
41 scholarship granting organization may not be deducted from unadjusted gross
42 income;

43 ▶ provides that, in determining state individual income tax, amounts contributed to a
44 scholarship granting organization that are deducted from federal adjusted gross
45 income shall be added to federal taxable income;

46 ▶ provides definitions and establishes procedures and requirements for administering
47 the tax credits;

48 ▶ establishes duties of scholarship granting organizations and provides penalties for
49 violations of law;

50 ▶ authorizes the State Tax Commission to make rules; and

51 ▶ authorizes the Division of Consumer Protection to enforce private school
52 requirements.

53 **Monies Appropriated in this Bill:**

54 None

55 **Other Special Clauses:**

56 This bill provides for retrospective operation.

57 **Utah Code Sections Affected:**

58 AMENDS:

59 **13-2-1**, as last amended by Chapter 222, Laws of Utah 2002

60 **59-7-106**, as last amended by Chapter 211, Laws of Utah 2002

61 **59-10-114**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

62 **63-55b-153**, as last amended by Chapters 131 and 223, Laws of Utah 2003

63 ENACTS:

64 **59-7-616**, Utah Code Annotated 1953

65 **59-7-617**, Utah Code Annotated 1953

66 **59-10-136**, Utah Code Annotated 1953

67 **59-10-137**, Utah Code Annotated 1953

68

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

70 Section 1. Section **13-2-1** is amended to read:

71 **13-2-1. Consumer protection division established -- Functions.**

72 (1) There is established within the Department of Commerce the Division of Consumer
73 Protection.

74 (2) The division shall administer and enforce the following:

75 (a) Chapter 5, Unfair Practices Act;

76 (b) Chapter 10a, Music Licensing Practices Act;

77 (c) Chapter 11, Utah Consumer Sales Practices Act;

78 (d) Chapter 15, Business Opportunity Disclosure Act;

79 (e) Chapter 20, New Motor Vehicles Warranties Act;

80 (f) Chapter 21, Credit Services Organizations Act;

81 (g) Chapter 22, Charitable Solicitations Act;

82 (h) Chapter 23, Health Spa Services Protection Act;

83 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

84 (j) Chapter 26, Telephone Fraud Prevention Act;

85 (k) Chapter 28, Prize Notices Regulation Act;

86 (l) Chapter 30, Utah Personal Introduction Services Protection Act; ~~and~~

87 (m) Chapter 34, Utah Postsecondary Proprietary School Act~~[-]; and~~

88 (n) Section 59-7-617, the requirements of private schools that issue school tuition
89 certificates.

Section 2. Section **59-7-106** is amended to read:

59-7-106. Subtractions from unadjusted income.

In computing adjusted income the following amounts shall be subtracted from unadjusted income:

(1) the foreign dividend gross-up included in gross income for federal income tax purposes under Section 78, Internal Revenue Code;

(2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct the loss on the current Utah return. The deduction shall be made by claiming the deduction on the current Utah return which shall be filed by the due date of the return, including extensions. For the purposes of this subsection all capital losses in a given year must be:

(a) deducted in the year incurred; or

(b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue Code;

(3) the decrease in salary expense deduction for federal income tax purposes due to claiming the federal jobs credit under Section 51, Internal Revenue Code;

(4) the decrease in qualified research and basic research expense deduction for federal income tax purposes due to claiming the federal research and development credit under Section 41, Internal Revenue Code;

(5) the decrease in qualified clinical testing expense deduction for federal income tax purposes due to claiming the federal orphan drug credit under Section 28, Internal Revenue Code;

(6) any decrease in any expense deduction for federal income tax purposes due to claiming any other federal credit;

(7) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and (2)(b);

(8) any income on the federal corporate return that has been previously taxed by Utah;

(9) amounts included in federal taxable income that are due to refunds of taxes imposed for the privilege of doing business, or exercising a corporate franchise, including income, franchise, corporate stock and business and occupation taxes paid by the corporation to Utah, another state of the United States, a foreign country, a United States possession, or the Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income

under Section 59-7-105;

(10) charitable contributions, to the extent allowed as a subtraction under Section 59-7-109, except for amounts claimed as a tax credit for a contribution to a scholarship granting organization in accordance with Section 59-7-616;

(11) (a) 50% of the dividends deemed received or received from subsidiaries which are members of the unitary group and are organized or incorporated outside of the United States unless such subsidiaries are included in a combined report under Section 59-7-402 or 59-7-403. In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the dividends deemed received or received, the expense directly attributable to those dividends. Interest expense attributable to excluded dividends shall be determined by multiplying interest expense by a fraction, the numerator of which is the taxpayer's average investment in such dividend paying subsidiaries, and the denominator of which is the taxpayer's average total investment in assets;

(b) in determining income apportionable to this state, a portion of the factors of a foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be included in the combined report factors. The portion to be included shall be determined by multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the numerator of which is the amount of the dividend paid by the foreign subsidiary which is included in adjusted income, and the denominator of which is the current year earnings and profits of the foreign subsidiary as determined under the Internal Revenue Code;

(12) (a) 50% of the adjusted income of a foreign operating company unless the taxpayer has elected to file a worldwide combined report as provided in Section 59-7-403. For purposes of this Subsection (12), when calculating the adjusted income of a foreign operating company, a foreign operating company may not deduct the subtractions allowable under this Subsection (12) and Subsection (11);

(b) in determining income apportionable to this state, the factors for a foreign operating company shall be included in the combined report factors in the same percentage its adjusted income is included in the combined adjusted income;

(13) the amount of gain or loss which is included in unadjusted income but not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, if an election has been

made pursuant to Section 338(h)(10), Internal Revenue Code;

(14) the amount of gain or loss which is included in unadjusted income but not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation pursuant to Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal Revenue Code, has been made for federal purposes;

(15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed under Section 59-7-107; and

(b) if there has been a reduction in federal basis for a federal tax credit where there is no corresponding Utah tax credit, the amount of the reduction in basis shall be allowed as an expense in the year of the federal credit;

(16) any interest expense not deducted on the federal corporate return under Section 265(b) or 291(e), Internal Revenue Code;

(17) 100% of the dividends received from subsidiaries which are insurance companies exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership" as defined by Subsection 59-7-101(7); and

(18) any amount included in unadjusted income that was derived from money paid by the taxpayer to the program fund and investment income earned on those payments under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, that is included in federal taxable income, but only when the monies are used for qualified higher education costs of the beneficiary.

Section 3. Section **59-7-616** is enacted to read:

59-7-616. Tax credit for contributions to scholarship granting organizations --

Definitions -- Duties of scholarship granting organizations -- Penalties.

(1) As used in this section:

(a) (i) "Private school" means an elementary or secondary school within this state that:

(A) is not owned and controlled by a governmental entity;

(B) provides instruction for one or more grades kindergarten through 12; and

(C) at which the compulsory attendance requirements of Section 53A-11-101 may be met.

(ii) "Private school" does not include a home school.

(b) (i) "Qualifying student" means, except as provided in Subsection (1)(b)(ii), an individual:

(A) who is enrolled at a private school as a full-time student as determined by the private school and is not participating in a dual enrollment program pursuant to Section 53A-11-102.5;

(B) for whom the private school has on file a release of information form;

(C) who will be under 19 years of age on the last day of the school year as determined by the private school, or, if the individual is disabled and has not graduated from high school with a regular diploma, will be under 22 years of age on the last day of the school year as determined by the private school; and

(D) who meets the following criteria:

(I) the individual was not enrolled at a private school on January 1, 2004; and

(II) the individual is a member of a household as defined in 7 C.F.R. Sec. 245.2 whose household income as determined under 7 C.F.R. Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, is less than 100% of the reduced price meals income eligibility guideline for the applicable household size as published by the U.S. Department of Agriculture by notice in the Federal Register.

(ii) "Qualifying student" does not include a private school student while enrolled in kindergarten during the 2004-05 school year.

(c) "Release of information form" means a form developed by a private school that:

(i) states that a parent of a qualifying student consents to the release of the information contained in the school tuition certificate; and

(ii) is consistent with the requirements of 20 U.S.C. Sec. 1232g, Family Educational Rights and Privacy Act of 1974.

(d) "Scholarship granting organization" means an organization that:

(i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code;

(ii) is incorporated under the laws of the state and has a physical presence in the state;

and

(iii) makes tuition grants to qualifying students to attend private schools in this state.

(e) "School tuition certificate" means a certificate developed by a private school that:

(i) is issued by the private school to the first scholarship granting organization that

during the calendar year:

(A) makes a tuition grant to a qualifying student in accordance with this section or Section 59-10-136; and

(B) requests the certificate from the private school; and

(ii) lists:

(A) the name of the qualifying student receiving a tuition grant in accordance with this section or Section 59-10-136;

(B) the calendar year for which the school tuition certificate is issued; and

(C) the qualifying student's tuition.

(2) For taxable years beginning on or after January 1, 2004, a taxpayer may claim a nonrefundable tax credit against the taxes imposed by this chapter as provided in this section for monetary contributions:

(i) the taxpayer makes during a taxable year to a scholarship granting organization; and

(ii) that will be used to make tuition grants, in accordance with Subsections (5) through (7), to qualifying students to attend private school.

(3) The tax credit provided for in this section may not be carried forward or carried back.

(4) A scholarship granting organization shall within 30 days after the day on which a taxpayer seeking to claim a tax credit under this section or Section 59-10-136 makes a contribution to the scholarship granting organization, provide to the taxpayer a written statement:

(a) certifying that the contribution shall be used to make tuition grants, in accordance with Subsections (5) through (7), to qualifying students to attend private schools; and

(b) listing the amount of the contribution.

(5) A scholarship granting organization shall make tuition payments for a qualifying student receiving a tuition grant funded from a contribution for which the scholarship granting organization issues a written statement in accordance with Subsection (4) to any private school in this state that is not under an injunction from the Division of Consumer Protection in accordance with Section 59-7-617, as selected by a parent of the qualifying student.

(6) (a) A scholarship granting organization may make a tuition grant during a calendar year to a qualifying student from a contribution for which the scholarship granting organization

issues a written statement in accordance with Subsection (4), if the scholarship granting organization during the calendar year:

(i) does not make tuition grants to that qualifying student from a contribution for which the scholarship granting organization issues a written statement in accordance with Subsection (4) the total amount of which exceeds 50% of the qualifying student's tuition, up to a maximum of \$2,000; and

(ii) obtains from the private school a school tuition certificate listing the name of that qualifying student.

(b) A private school may not issue more than one school tuition certificate during a calendar year that lists the name of a particular qualifying student.

(c) (i) A scholarship granting organization shall pay to the commission a penalty calculated under Subsection (6)(c)(ii) if during a calendar year the scholarship granting organization makes one or more tuition grants to a qualifying student:

(A) that exceeds 50% of the qualifying student's tuition, up to a maximum of \$2,000;
or

(B) without obtaining from the private school a school tuition certificate listing the name of that qualifying student.

(ii) (A) The penalty for making tuition grants to a qualifying student that exceeds 50% of a qualifying student's tuition, up to a maximum of \$2,000, is an amount equal to the difference between:

(I) 50% of the qualifying student's tuition, up to a maximum of \$2,000; and

(II) the total amount of tuition grants the scholarship granting organization makes to the qualifying student during a calendar year from a contribution for which the scholarship granting organization issues a written statement in accordance with Subsection (4).

(B) The penalty for making tuition grants to a qualifying student without obtaining a school tuition certificate for the student is an amount equal to the total amount of tuition grants the scholarship granting organization makes to the qualifying student during a calendar year from a contribution for which the scholarship granting organization issues a written statement in accordance with Subsection (4).

(d) The commission shall deposit any penalties the commission collected under this Subsection (6) into the Uniform School Fund.

(7) (a) A scholarship granting organization shall expend at least 98% of each contribution for which the organization issues a written statement in accordance with Subsection (4):

(i) for tuition grants to qualifying students to attend private schools in this state; and
(ii) within a 12-month period after the day on which the organization receives the contribution.

(b) A scholarship granting organization may expend up to 2% of each contribution for which the organization issues a written statement in accordance with Subsection (4) to administer the tuition grant program.

(c) A scholarship granting organization that fails to comply with the requirements of Subsection (7)(a) shall pay to the commission a penalty equal to the sum of:

(i) the amount that is not spent in accordance with Subsection (7)(a); and
(ii) the interest or earnings the scholarship granting organization receives on the amount that is not spent in accordance with Subsection (7)(a).

(d) The commission shall deposit any penalties the commission collects under this Subsection (7) into the Uniform School Fund.

(8) (a) A scholarship granting organization that receives contributions from taxpayers seeking a tax credit pursuant to this section or Section 59-10-136 shall provide to the commission an annual audit conducted by an independent certified public accountant that includes:

(i) a financial audit of its accounts and records; and
(ii) a compliance audit prepared for the purpose of determining the scholarship granting organization's compliance with the requirements of this section and Section 59-10-136.

(b) The audits required by Subsection (8)(a) shall be prepared in accordance with:

(i) generally accepted auditing and attestation standards promulgated by the American Institute of Certified Public Accountants; and
(ii) generally accepted government auditing standards promulgated by the United States General Accounting Office.

(9) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules requiring scholarship granting organizations to verify that each

tuition grant recipient meets the requirements of a qualifying student under Subsection (1)(b).

(10) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, the commission may enjoin a scholarship granting organization that fails to comply with this section from accepting contributions from taxpayers seeking to claim a tax credit under this section or Section 59-10-136 on a temporary or permanent basis.

(11) Nothing in this section or Section 13-2-1, 59-10-136, or 59-10-137 grants additional authority to any state agency or school district to regulate private schools, except as expressly set forth in these sections.

Section 4. Section **59-7-617** is enacted to read:

59-7-617. Private school requirements -- School tuition certificates -- Enforcement -- Orders.

(1) As used in this section:

(a) "Private school" is as defined in Section 59-7-616.

(b) "School tuition certificate" is as defined in Section 59-7-616.

(2) A private school may not issue a school tuition certificate unless it:

(a) (i) annually assesses the achievement of each student for which a tuition tax credit certificate is issued by administering a standardized achievement test scored by an independent party that provides a comparison of the student's performance to other students on a national basis; and

(ii) (A) reports the test results to the student's parents; and

(B) upon request, makes tests results available to other persons, in a manner that does not reveal the identity of any student;

(b) provides to parents the relevant credentials of teachers who will be teaching their children;

(c) provides to parents a statement indicating which, if any, organizations have accredited the private school; and

(d) has not been enjoined from issuing school tuition certificates in accordance with Subsection (3).

(3) (a) The Division of Consumer Protection may use its enforcement powers to investigate complaints and convene administrative hearings for a violation of Subsection (2).

(b) If the Division of Consumer Protection finds repeated and willful violations of

Subsection (2), it shall issue an order that enjoins the private school from issuing a school tuition certificate for the subsequent school year.

Section 5. 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;

(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[-]; and

(j) for taxable years beginning on or after January 1, 2004, the amount contributed to a scholarship granting organization in accordance with Section 59-10-136 that is not included in adjusted gross income on the taxpayer's federal income tax return for the taxable year.

(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);

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

(f) 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) 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) 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) (i) except as otherwise provided in this Subsection (2)(i), 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) 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)(ii)(A);

(j) 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) 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;

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

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

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

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

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

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

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

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

and

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

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

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

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

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

(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned over \$32,000, the amount of the retirement income exemption that may be subtracted 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 retirement income exemption that may be subtracted 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), 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), 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.

524 (4) (a) A subtraction for an amount described in Subsection (2)(l) is allowed only if:
525 (i) the taxpayer is a Ute tribal member; and
526 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
527 requirements of this Subsection (4).
528 (b) The agreement described in Subsection (4)(a):
529 (i) may not:
530 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
531 (B) provide a subtraction under this section greater than or different from the
532 subtraction described in Subsection (2)(l); or
533 (C) affect the power of the state to establish rates of taxation; and
534 (ii) shall:
535 (A) provide for the implementation of the subtraction described in Subsection (2)(l);
536 (B) be in writing;
537 (C) be signed by:
538 (I) the governor; and
539 (II) the chair of the Business Committee of the Ute tribe;
540 (D) be conditioned on obtaining any approval required by federal law; and
541 (E) state the effective date of the agreement.
542 (c) (i) The governor shall report to the commission by no later than February 1 of each
543 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
544 in effect.
545 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
546 subtraction permitted under Subsection (2)(l) is not allowed for taxable years beginning on or
547 after the January 1 following the termination of the agreement.
548 (d) For purposes of Subsection (2)(l) and in accordance with Title 63, Chapter 46a,
549 Utah Administrative Rulemaking Act, the commission may make rules:
550 (i) for determining whether income is derived from a source within the Uintah and
551 Ouray Reservation; and
552 (ii) that are substantially similar to how federal adjusted gross income derived from
553 Utah sources is determined under Section 59-10-117.
554 (5) (a) For purposes of this Subsection (5), "Form 8814" means:

(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.

Section 6. Section **59-10-136** is enacted to read:

59-10-136. Tax credit for contributions to scholarship granting organizations --
Definitions -- Duties of scholarship granting organizations -- Penalties.

(1) As used in this section:

(a) "Private school" is as defined in Section 59-7-616.

(b) "Qualifying student" is as defined in Section 59-7-616.

(c) "Scholarship granting organization" is as defined in Section 59-7-616.

(d) "School tuition certificate" is as defined in Section 59-7-616.

(2) For taxable years beginning on or after January 1, 2004, a taxpayer may claim a nonrefundable tax credit against the taxes imposed by this chapter as provided in this section for monetary contributions:

(a) the taxpayer makes during a taxable year to a scholarship granting organization; and

(b) that will be used to make tuition grants, in accordance with Section 59-7-616 and rules adopted by the commission under that section, to qualifying students to attend private school.

(3) The tax credit provided for in this section may not be carried forward or carried back.

(4) A scholarship granting organization shall provide a written statement to a taxpayer seeking to claim a tax credit under this section in accordance with Section 59-7-616.

Section 7. Section **59-10-137** is enacted to read:

59-10-137. Refundable tuition tax credit -- Definitions.

(1) As used in this section:

(a) "Private school" means a school:

(i) as defined in Section 59-7-616; and

(ii) that meets requirements to issue school tuition certificates to students receiving a tuition grant from a scholarship granting organization, as provided in Section 59-7-617.

(b) (i) "Qualifying student" means, except as provided in Subsection (1)(b)(ii), an individual:

(A) who is enrolled at a private school as a full-time student as determined by the

private school and is not participating in a dual enrollment program pursuant to Section 53A-11-102.5;

(B) for whom the private school has on file a release of information form;

(C) who will be under 19 years of age on the last day of the school year as determined by the private school, or, if the individual is disabled and has not graduated from high school with a regular diploma, will be under 22 years of age on the last day of the school year as determined by the private school; and

(D) who was not enrolled at a private school on January 1, 2004.

(ii) "Qualifying student" does not include a private school student while enrolled in kindergarten during the 2004-05 school year.

(2) (a) For taxable years beginning on or after January 1, 2004, a taxpayer may claim a refundable tax credit against the taxes imposed by this chapter as provided in this section for amounts paid to a private school for tuition:

(i) on behalf of a qualifying student; and

(ii) during the taxable year.

(b) The refundable tax credit under Subsection (2)(a) may not exceed the lesser of:

(i) 50% of amounts paid to a private school for tuition, up to a maximum of \$2,000; or

(ii) \$3,000 minus the total amount of tuition grants the qualifying student received from a scholarship granting organization during the taxable year.

(3) The tax credit provided for in this section may not be carried forward or carried back.

Section 8. Section **63-55b-153** is amended to read:

63-55b-153. Repeal dates -- Titles 53, 53A, and 53B.

(1) Subsection 53-3-205(9)(a)(i)(D) is repealed July 1, 2007.

(2) Subsection 53-3-804(2)(g) is repealed July 1, 2007.

(3) Title 53, Chapter 12, State Olympic Public Safety Command Act, is repealed July 1, 2003.

(4) Section 53A-1-403.5 is repealed July 1, 2007.

(5) Section 53A-17a-150 is repealed July 1, 2007.

[5] (6) Section 53B-8-104.5 is repealed July 1, 2009.

Section 9. **Retrospective operation.**

648 This bill has retrospective operation for taxable years beginning on or after January 1,
649 2004.

Legislative Review Note
as of 2-3-04 5:17 PM

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

Office of Legislative Research and General Counsel

State Impact

The estimated net fiscal impact of this bill for FY 2005 is a positive fund balance of \$5,118,200 to the State. For FY 2006 the estimated net balance is a positive \$2,119,400.

Passage of the bill would require an appropriation of \$130,400 in FY 2005, and \$129,200 in FY 2006 from the Commerce Service Fund to the Department of Commerce, Division of Consumer Protection for administrative costs required by the bill. Cost for the Utah State Tax Commission for additional computer programming associated with implementation of the bill can be absorbed within the existing budget for FY 2005.

The issuance of tuition tax credits would reduce income tax revenue to the State by an estimated \$9,072,700 in FY 2005, and \$12,993,000 in FY 2006. This loss in revenue would be offset by reduced appropriations to the Minimum School Program for students leaving the Public Education System to go to private school. The offset amount for FY 2005 is estimated at \$14,321,300, and for FY 2006 the amount is estimated at \$15,241,600. The bill provides that Scholarship Granting Organizations may use up to 2 percent of tax credit donations for administrative costs. Two percent in FY 2005 could be as much as \$53,500; and in FY 2006 the estimate is \$76,700.

	<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>
Income Tax	\$0	\$0	(\$9,072,700)	(\$12,993,000)
Uniform School Fund	(\$14,321,300)	(\$15,241,600)	\$0	\$0
Commerce Service Fund	\$130,400	\$129,200	\$0	\$0
TOTAL	<u><u>(\$14,190,900)</u></u>	<u><u>(\$15,112,400)</u></u>	<u><u>(\$9,072,700)</u></u>	<u><u>(\$12,993,000)</u></u>

Individual and Business Impact

Local School Districts could potentially benefit by savings in school construction costs over time depending on how many students choose private schooling over Public Education. The impact of students leaving for private school could have a differential impact on local districts depending on number leaving and impact on related fixed costs.

The bill provides a tax credit for qualifying individuals and Scholarship Granting Organizations. The average credit is \$2,000.

Savings in state construction costs assumes that there would be comparable costs to private entities.
