

HIGHER EDUCATION SAVINGS INCENTIVE

PROGRAM AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott L Wyatt

Senate Sponsor: Dan R. Eastman

LONG TITLE

General Description:

This bill modifies the Utah System of Higher Education Code and the Revenue and Taxation Code regarding the Utah Educational Savings Plan Trust, an investment plan used to pay for higher education costs.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows moneys in the Utah Educational Savings Plan Trust to be invested in mutual funds;
- ▶ allows the board of directors of the Utah Educational Savings Plan Trust to hire:
 - investment advisors with certain qualifications;
 - an administrator to perform recordkeeping functions; and
 - a custodian for the safekeeping of trust assets;
- ▶ reestablishes the maximum amount of investments that may be subtracted from an individual's federal taxable income for each beneficiary;
 - ▶ clarifies that beneficiaries shall be designated before age 19 to qualify to deduct investments from federal taxable income;
 - ▶ requires that benefits be paid by a certain time;
 - ▶ requires each account agreement to clearly state that there are no guarantees regarding moneys in the trust;
 - ▶ requires each account agreement to provide that:

- neither a contributor nor a beneficiary may direct the investment of any contributions or earnings on contributions;
 - money in the trust may not be used as security on a loan;
 - an account owner may not borrow from the trust; and
 - the program administrator may amend the agreement to maintain the trust as a qualified tuition program under federal law;
- ▶ allows transfers from the program fund to the administrative fund to pay for operating costs as included in the budget approved by the board of directors of the Utah Educational Savings Plan Trust;
 - ▶ discontinues the allocation of a pro rata share of interest income from the endowment fund to all account owners;
 - ▶ allows interest income on the endowment fund to be used to enhance the savings of low income account owners, in accordance with rules of the board of directors of the Utah Educational Savings Plan Trust;
 - ▶ allows the original principal in the endowment fund to be transferred to the administrative fund upon approval by the board of directors of the Utah Educational Savings Plan Trust;
 - ▶ provides for the disbursement of account moneys and the levy of an administrative refund fee when an account is cancelled;
 - ▶ conforms the Revenue and Taxation Code with federal tax law regarding tuition programs;
 - ▶ eliminates the Utah Supplemental Educational Savings Plan Trust; and
 - ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

- 53B-8a-101**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 53B-8a-102**, as last amended by Chapter 123, Laws of Utah 1998
- 53B-8a-103**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 53B-8a-105**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 53B-8a-106**, as last amended by Chapter 144, Laws of Utah 2000
- 53B-8a-107**, as last amended by Chapter 39, Laws of Utah 1997
- 53B-8a-108**, as last amended by Chapter 211, Laws of Utah 2002
- 53B-8a-109**, as last amended by Chapter 211, Laws of Utah 2002
- 53B-8a-113**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 59-7-105**, as last amended by Chapter 211, Laws of Utah 2002
- 59-10-114**, as last amended by Chapter 2, Laws of Utah 2004, Fourth Special Session
- 59-10-201**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

REPEALS:

- 53B-8b-101**, as enacted by Chapter 390, Laws of Utah 1997
 - 53B-8b-102**, as enacted by Chapter 390, Laws of Utah 1997
 - 53B-8b-103**, as enacted by Chapter 390, Laws of Utah 1997
 - 53B-8b-104**, as enacted by Chapter 390, Laws of Utah 1997
 - 53B-8b-105**, as last amended by Chapter 240, Laws of Utah 1999
 - 53B-8b-106**, as enacted by Chapter 390, Laws of Utah 1997
 - 53B-8b-107**, as enacted by Chapter 390, Laws of Utah 1997
 - 53B-8b-108**, as enacted by Chapter 390, Laws of Utah 1997
 - 53B-8b-109**, as last amended by Chapter 210, Laws of Utah 2002
 - 53B-8b-110**, as enacted by Chapter 390, Laws of Utah 1997
 - 53B-8b-111**, as enacted by Chapter 390, Laws of Utah 1997
 - 53B-8b-112**, as enacted by Chapter 390, Laws of Utah 1997
 - 59-10-901**, as enacted by Chapter 390, Laws of Utah 1997
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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53B-8a-101** is amended to read:

53B-8a-101. Purpose.

(1) (a) The Legislature finds that the general welfare and well-being of the state are directly related to educational levels and skills of the citizens of the state.

(b) Therefore, a vital and valid public purpose is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the state.

(2) (a) The Legislature finds that the state has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the state's public institutions of higher education and the general welfare of the citizens of the state will be enhanced by establishing a program which allows citizens of the state to invest money in a public trust for future application to the payment of higher education costs.

(b) The Legislature further finds that the creation of the means of encouragement for citizens to invest in such a program represents the carrying out of a vital and valid public purpose.

(3) (a) In order to make available to the citizens of the state an opportunity to fund future higher education needs, it is necessary that a public trust be established in which moneys may be invested for future educational use.

(b) It [~~is~~] may also be necessary to establish and create an endowment fund, which may be funded with public funds, among other sources, the income from which [~~will~~] may be made available to [~~participants in the trust~~] account owners to enhance their savings invested for future higher education costs.

Section 2. Section **53B-8a-102** is amended to read:

53B-8a-102. Definitions.

As used in this chapter:

(1) "Account agreement" means an agreement between an account owner and the trust entered into under this chapter.

(2) "Account owner" means an individual, firm, corporation, or its legal representative or legal successor, who has entered into an account agreement under this chapter for the advance payment of higher education costs on behalf of a beneficiary.

~~[(1)]~~ (3) "Administrative fund" means the moneys used to administer the Utah Educational Savings Plan Trust.

~~[(2)]~~ (4) "Beneficiary" means the individual designated ~~[by a participation]~~ in an account agreement to benefit from payments for higher education costs at an institution of higher education.

~~[(3)]~~ (5) "Benefits" means the payment of higher education costs on behalf of a beneficiary by the trust during the beneficiary's attendance at an institution of higher education.

~~[(4)]~~ (6) "Board" means the board of directors of the Utah Educational Savings Plan Trust which is the state Board of Regents acting in its capacity as the Utah Higher Education Assistance Authority under Title 53B, Chapter 12.

~~[(5)]~~ (7) "Endowment fund" means the endowment fund established under Section 53B-8a-107 which is held as a separate fund within the trust.

~~[(6)]~~ (8) "Higher education costs" means the certified costs of tuition, fees, room and board, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an institution of higher education.

~~[(7)]~~ (9) "Institution of higher education" means a qualified proprietary school approved by the board, a two-year or four-year public or regionally accredited private nonprofit college or university or a Utah college of applied technology ~~[center]~~, with regard to students enrolled in postsecondary training or education programs.

~~[(8)] "Participant" means an individual, firm, corporation, or its legal representative or their legal successor, who has entered into a participation agreement under this chapter for the advance payment of higher education costs on behalf of a beneficiary.]~~

~~[(9)] "Participation agreement" means an agreement between a participant and the trust entered into under this chapter.]~~

(10) "Program administrator" means the administrator of the trust appointed by the board

to administer and manage the trust.

(11) "Program fund" means the program fund created under Section 53B-8a-107, which is held as a separate fund within the trust.

(12) "Tuition and fees" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

(13) "Utah Educational Savings Plan Trust" or "trust" means the trust created under Section 53B-8a-103.

(14) "Vested [~~participation agreement~~] account" means [~~a participation~~] an account agreement which has been in full force and effect during eight continuous years of residency of the beneficiary in the state while participating in the trust.

Section 3. Section **53B-8a-103** is amended to read:

53B-8a-103. Creation of Utah Educational Savings Plan Trust.

(1) There is created the Utah Educational Savings Plan Trust.

(2) The board is the trustee of the trust.

(3) The board, in the capacity of trustee, may:

(a) exercise any authority granted by law to the Board of Regents;

(b) make and enter into contracts necessary for the administration of the trust created under this chapter;

(c) adopt a corporate seal and change and amend it from time to time;

(d) invest moneys within the program fund [~~and the endowment fund~~];

(i) (A) in any investments [~~which~~] that are determined by the board to be appropriate[;]
and are approved by the state treasurer[; ~~and~~]; or

(B) in mutual funds registered under the Investment Company Act of 1940, consistent with the best interests of a designated beneficiary's higher education funding needs; and

(ii) are in compliance with rules of the State Money Management Council applicable to gift funds;

(e) invest moneys within the endowment fund in any investments that are:

(i) determined by the board to be appropriate;

(ii) approved by the state treasurer; and

(iii) in compliance with rules of the State Money Management Council applicable to gift funds;

~~(e)~~ (f) enter into agreements with any institution of higher education, ~~[the state, or]~~ any federal or ~~[other]~~ state agency, or other entity as required to implement this chapter;

~~(f)~~ (g) accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation for deposit to the administrative fund, endowment fund, or the program fund;

~~(g)~~ (h) enter into ~~[participation]~~ account agreements with ~~[participants]~~ account owners;

~~(h)~~ (i) make payments to institutions of higher education pursuant to ~~[participation]~~ account agreements on behalf of beneficiaries;

~~(i)~~ (j) make refunds to ~~[participants]~~ account owners upon the termination of ~~[participation]~~ account agreements pursuant to the provisions~~[, limitations, and restrictions set forth in]~~ of this chapter;

~~(j)~~ (k) appoint a program administrator and determine the duties of the program administrator and other staff as necessary and fix their compensation;

~~(k)~~ (l) make provision for the payment of costs of administration and operation of the trust; and

~~(l)~~ (m) carry out the duties and obligations of the trust pursuant to this chapter.

Section 4. Section **53B-8a-105** is amended to read:

53B-8a-105. Additional powers of board as to savings plan trust.

The board has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this chapter pertaining to the trust, including the power to:

(1) engage ~~[investment advisors to assist in the investment of trust assets;]~~;

(a) one or more investment advisors, registered under the Investment Advisors Act of 1940, with at least 5,000 advisory clients and at least \$1,000,000,000 under management, to provide investment advice to the board with respect to the assets held in each account;

(b) an administrator to perform recordkeeping functions on behalf of the trust; and

(c) a custodian for the safekeeping of the assets of the trust;

(2) carry out studies and projections in order to advise [~~participants~~] account owners regarding present and estimated future higher education costs and levels of financial participation in the trust required in order to enable [~~participants~~] account owners to achieve their educational funding objective;

(3) contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice, all of which contract obligations and services shall be payable from any moneys of the trust;

(4) participate in any other way in any federal, state, or local governmental program for the benefit of the trust;

(5) promulgate, impose, and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges, including penalties for cancellations and late payments [~~in respect of participation agreements~~];

(6) procure insurance against any loss in connection with the property, assets, or activities of the trust;

(7) administer the funds of the trust;

(8) solicit and accept for the benefit of the endowment fund gifts, grants, and other moneys, including general fund moneys from the state and grants from any federal or other governmental agency;

(9) procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board; and

(10) make rules and regulations for the administration of the trust.

Section 5. Section **53B-8a-106** is amended to read:

53B-8a-106. Account agreements.

The trust may enter into [~~participation~~] account agreements with [~~participants~~] account

owners on behalf of beneficiaries under the following terms and agreements:

(1) (a) [~~Each participation~~] An account agreement [~~shall~~] may require [~~a participant to~~] an account owner 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~~] program administrator.

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

(c) [~~A participant~~] An account owner 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~~] program administrator.

(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)(j) shall be [~~\$1,200~~] \$1,510 for each individual beneficiary for the [~~1996~~] 2005 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) (2) (a) (i) Beneficiaries designated in [participation] account agreements must be designated [from date of birth through age 18] after birth and before age 19 for the participant to subtract allowable investments from federal taxable income under Subsection 59-10-114(2)(j).~~

~~(ii) If the beneficiary is designated after birth and before age 19, the payment of benefits provided under the account agreement must begin not later than the beneficiary's 27th birthday.~~

(b) (i) [~~Participants~~] Account owners may designate beneficiaries [~~after age 18~~] age 19 or older, but investments for those beneficiaries are not eligible for subtraction from federal taxable income.

~~[(4) Payment] (ii) If a beneficiary age 19 or older is designated, the payment of benefits provided under [participation agreements] the account agreement must begin not later than [the first full fall academic quarter or semester at an institution of higher education following the 22nd birthday or high school graduation of the beneficiary, whichever is later, unless the~~

participant notifies the program administrator to the contrary.] ten years from the account agreement date.

(3) Each account agreement shall state clearly that there are no guarantees regarding moneys in the trust as to the return of principal and that losses could occur.

(4) Each account agreement shall provide that:

(a) no contributor to, or designated beneficiary under, an account agreement may direct the investment of any contributions or earnings on contributions;

(b) no part of the money in any account may be used as security for a loan; and

(c) no account owner may borrow from the trust.

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

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

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

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

(d) graduate from the institution of higher education.

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

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

(8) Each [~~participation~~] account agreement shall provide that:

(a) the [~~participation~~] account agreement may be canceled upon the terms and conditions, and upon payment of the fees and costs set forth and contained in the board's rules and

regulations[-]; and

(b) the program administrator may amend the agreement unilaterally and retroactively, if necessary, to maintain the trust as a qualified tuition program under Section 529 Internal Revenue Code.

Section 6. Section **53B-8a-107** is amended to read:

53B-8a-107. Program, endowment, and administrative funds -- Investment and payments from funds.

(1) (a) The board shall segregate moneys received by the trust into three funds, the program fund, the endowment fund, and the administrative fund.

(b) No more than two percentage points of the interest earned annually in the endowment fund may be transferred to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required under Sections 53B-8a-103 through 53B-8a-105.

(c) ~~[No more than .5 percentage points of the interest earned annually in]~~ Transfers may be made from the program fund ~~[may be transferred]~~ to the administrative fund to pay operating costs:

(i) associated with administering the trust and as required under Sections 53B-8a-103 through 53B-8a-105[-]; and

(ii) as included in the budget approved by the board of directors of the Utah Educational Savings Plan Trust.

(d) All moneys paid by ~~[participants]~~ account owners in connection with ~~[participation]~~ account agreements shall be deposited as received into separate accounts within the program fund which shall be promptly invested and accounted for separately.

(e) All moneys received by the trust from the proceeds of gifts and other endowments for the purposes of the trust shall be deposited as received into the endowment fund, which shall be promptly invested and accounted for separately.

~~[(f) The program fund and the endowment fund shall be separately administered.]~~

~~[(g)]~~ (f) Any gifts, grants, or donations made by any governmental unit or any person,

firm, partnership, or corporation to the trust for deposit to the endowment fund shall be a grant, gift, or donation to the state for the accomplishment of a valid public eleemosynary, charitable, and educational purpose and shall not be included in the income of the donor for Utah tax purposes.

(2) (a) ~~[Each beneficiary]~~ Through March 31, 2005, each account owner under ~~[a participation]~~ an account agreement ~~[shall]~~ may receive an interest in a portion, as determined by policy, of the investment income derived by the endowment fund in any year during which funds are invested in the program fund on behalf of the beneficiary, to be payable ~~[each year in which moneys are paid under the participation agreement to institutions of higher education for higher education costs, not to exceed the cost of attendance at the institution]~~ as provided in Subsection (2)(c).

(b) The interest in the investment income derived by the endowment fund that accrues to a beneficiary in any year shall be in the ratio that the principal amount paid by the ~~[participant]~~ account owner under the ~~[participation]~~ account agreement and investment income earned to date under the agreement bears to the principal amount of all moneys, funds, and securities then held in the program fund during the year.

(c) ~~[At]~~ (i) Except as provided in Subsection (2)(c)(ii), at the time any payments or disbursements for higher education costs are ~~[due]~~ made from the trust to any institution of higher education under ~~[a participation]~~ an account agreement, the trust shall add to that payment from endowment fund income a pro rata portion of the amount calculated pursuant to Subsection (2)(b), which shall be transferred directly to the institution of higher education simultaneously with the payment made from the program fund and shall be used for payment of the higher education costs of the beneficiary, but not to exceed the amount which, in combination with the current payment due from the program fund, equals the beneficiary's higher education costs for the current period of enrollment.

(ii) Effective March 31, 2005, any interest income on the endowment fund accruing to a beneficiary that has not been transferred to an institution of higher education pursuant to Subsection (2)(c)(i) shall be transferred to the beneficiary's program fund account.

(3) Beginning on April 1, 2005:

(a) interest income on the endowment fund may be used to enhance the savings of low income account owners investing in the trust, as provided by rules of the board; and

(b) the original principal in the endowment fund may be transferred to the administrative fund upon approval by the board.

~~[(d)]~~ (4) Endowment fund earnings not accruing to a beneficiary under a participation agreement or not transferred to the administrative fund shall be reinvested in the endowment fund.

~~[(e)]~~ (5) Moneys accrued by ~~[participants]~~ account owners in the program fund of the trust may be used for payments to any institution of higher education.

~~[(f)]~~ (6) No rights to any moneys derived from the endowment fund shall exist if moneys payable under the ~~[participation]~~ account agreement are paid to an education institution which is not an institution of higher education as defined in Section 53B-8a-102.

Section 7. Section **53B-8a-108** is amended to read:

53B-8a-108. Cancellation of agreements.

(1) Any ~~[participant]~~ account owner may cancel ~~[a participation]~~ an account agreement at will.

~~[(2) If the participation agreement is canceled by a participant prior to the expiration of two years from the date of original execution of the participation agreement, the participant shall receive 100% of the principal amount of all contributions made by the participant, up to the current account balance, but any investment income which has been credited to the participant's account may be retained by the trust to cover administration expenses.]~~

~~[(3) After a participation agreement has been in effect for two years, a participant shall be entitled to the return upon cancellation of the agreement of the principal amount of all contributions made by the participant, up to the current account balance, plus actual investment income on the contributions less a reasonable administrative refund fee to be levied by the trust, which shall be sufficient to reasonably compensate the trust for its administrative costs incident to the participation agreement.]~~

~~[(4) (a) Upon the occurrence of any of the following circumstances, a reasonable]~~

(2) If an account agreement is cancelled by the account owner, the current account balance shall be disbursed to the account owner less:

(a) an administrative refund fee, which may be charged by the trust, except as provided in Subsection (3); and

(b) any penalty or tax required to be withheld by the Internal Revenue Code.

(3) An administration refund fee may not be levied by the trust [in the event of termination of a participation] if the account agreement is cancelled due to:

~~[(i)]~~ (a) the death of the beneficiary; or

~~[(ii)]~~ (b) the permanent disability or mental incapacity of the beneficiary.

~~[(b) In the event of cancellation of a participation agreement for any of the causes listed in Subsection (4)(a), the participant shall be entitled to receive the principal amount of all payments made by the participant under the participation agreement, up to the current account balance, and the actual investment income earned on the payments.]~~

(4) The board shall make rules for the disposition of monies transferred to an account pursuant to Subsection 53A-8a-107(2)(c)(ii) and the earnings on those monies when an account agreement is cancelled.

Section 8. Section **53B-8a-109** is amended to read:

53B-8a-109. Repayment and ownership of payments and investment income -- Transfer of ownership rights.

(1) (a) The ~~[participant]~~ account owner retains ownership of all payments made under ~~[any participation]~~ the account agreement ~~[up to the date of utilization for payment of]~~ until utilized to pay higher education costs for the beneficiary.

(b) All income derived from the investment of the payments made by the ~~[participant]~~ account owner shall be considered to be held in trust for the benefit of the beneficiary.

~~[(2) (a) In the event the participation agreement is terminated prior to payment of higher education costs for the beneficiary, the participant is entitled to a full refund of all payments made under the participation agreement, up to the current account balance, and all investment~~

~~income credited on all the payments, less:]~~

~~[(i) a reasonable administrative fee which may be levied by the trust; and]~~

~~[(ii) any penalty or tax required to be withheld by the Internal Revenue Code:]~~

~~[(b) No right to receive investment income shall exist in cases of voluntary participant termination except as provided in Section 53B-8a-108.]~~

~~[(3) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant.]~~

~~[(4)] (2) The institution of higher education shall obtain ownership of the payments made for the higher education costs paid to the institution at the time each payment is made to the institution.~~

~~[(5)] (3) Any amounts ~~[which]~~ that may be paid pursuant to the Utah Educational Savings Plan Trust ~~[which]~~ that are not listed in this section are owned by the trust.~~

~~[(6)] (4) (a) ~~[A participant]~~ An account owner may transfer ownership rights to another eligible ~~[participant, including a gift of the ownership rights to a minor beneficiary]~~ person.~~

(b) The transfer shall be affected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the ~~[participation]~~ account agreement.

Section 9. Section **53B-8a-113** is amended to read:

53B-8a-113. Property rights to assets in trust.

(1) The assets of the trust, including the program fund and the endowment fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the ~~[participants]~~ account owners and beneficiaries.

(2) No property rights in the trust shall exist in favor of the state.

(3) The assets may not be transferred or used by the state for any purposes other than the purposes of the trust.

Section 10. Section **59-7-105** is amended to read:

59-7-105. Additions to unadjusted income.

In computing adjusted income the following amounts shall be added to unadjusted income:

(1) interest from bonds, notes, and other evidences of indebtedness issued by any state of the United States, including any agency and instrumentality of a state of the United States;

(2) the amount of any deduction taken on a corporation's federal return for taxes paid by a corporation:

(a) to Utah for taxes imposed by this chapter; and

(b) to another state of the United States, a foreign country, a United States possession, or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or exercising its corporate franchise, including income, franchise, corporate stock and business and occupation taxes;

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

(4) capital losses that have been deducted on a Utah corporate return in previous years;

(5) any deduction on the federal return that has been previously deducted on the Utah return;

(6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;

(7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated technological equipment;

(8) charitable contributions, to the extent deducted on the federal return when determining federal taxable income;

(9) the amount of gain or loss determined under Section 59-7-114 relating to a target corporation under Section 338, Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(10) the amount of gain or loss determined under Section 59-7-115 relating to corporations treated for federal purposes as having disposed of its assets under Section 336(e), Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(11) 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

(12) the amount [~~refunded~~] disbursed to [~~a participant or beneficiary~~] an account owner under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, to the extent deducted on a Utah return in previous years and not used for qualified higher education costs of the beneficiary, in the year in which the amount is [~~refunded~~] disbursed.

Section 11. 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~~] disbursed to [~~a participant~~] an account owner under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is [~~refunded~~] disbursed;

(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);

(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]~~ an account owner 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]~~ account agreements ~~[under Subsection 53B-8a-106(1)]~~ entered into under Section 53B-8a-106 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;

(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;
and

(n) (i) except as provided in Subsection (2)(n)(ii), for the taxable year beginning on or after January 1, 2004, but beginning on or before December 31, 2004, income a resident or nonresident individual receives:

(A) for qualifying military service; and

(B) to the extent that income is included in adjusted gross income on that resident or nonresident individual's federal individual income tax return for that taxable year;

(ii) notwithstanding Subsection (2)(n)(i), a subtraction from federal taxable income is not allowed under Subsection (2)(n)(i) for income included in adjusted gross income on a resident or nonresident individual's federal individual income tax return for that taxable year if that income is received from a source that constitutes a:

(A) pension; or

(B) survivor benefit; and

(iii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for purposes of Subsections (1)(n)(i) and (ii), the commission may by rule define what constitutes income:

(A) a resident or nonresident individual receives for qualifying military service; or

(B) received from a source that constitutes a:

(I) pension; or

(II) survivor benefit.

(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.

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

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

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

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

(i) may not:

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

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

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

(ii) shall:

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

(B) be in writing;

(C) be signed by:

(I) the governor; and

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

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

(E) state the effective date of the agreement.

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

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

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

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

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

(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 12. 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 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~~] trust established in Title 53B, Chapter 8a, Higher Education Savings Incentive Program, [~~and Chapter 8b, Higher Education Supplemental Savings Incentive Program,~~] and [~~their~~] its income from operations and investments are exempt from all

taxation by the state under this chapter.

Section 13. Repealer.

This bill repeals:

Section 53B-8b-101, Purpose.

Section 53B-8b-102, Definitions.

Section 53B-8b-103, Creation of Utah Supplemental Educational Savings Plan Trust.

Section 53B-8b-104, Additional powers of board as to the trust.

Section 53B-8b-105, Participation agreements -- Content.

Section 53B-8b-106, Program and administrative funds -- Transfer between funds.

Section 53B-8b-107, Ownership of contributions and earnings.

Section 53B-8b-108, Effect of payments on determination of need and eligibility for student aid.

Section 53B-8b-109, Annual audited financial report.

Section 53B-8b-110, Tax considerations.

Section 53B-8b-111, Property rights to assets in trust.

Section 53B-8b-112, Liberal construction.

Section 59-10-901, Tax considerations for Utah Supplemental Educational Savings Plan Trust.

Section 14. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.