

1 **TUITION TAX CREDITS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: James A. Ferrin**

5

LONG TITLE

6 **General Description:**

7
8 This bill modifies Corporate Franchise and Income Taxes and the Individual Income
9 Tax Act to provide for tax credits for amounts paid to a private school for tuition or for
10 contributions to a scholarship granting organization to be used for tuition grants for
11 students attending a private school.

12 **Highlighted Provisions:**

13 This bill:

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

- 18 • a qualifying student may receive a tuition grant from only one scholarship
19 granting organization each year;
- 20 • the tuition grant may not exceed 50% of the qualifying student's tuition, up to a
21 maximum of \$2,000;
- 22 • a qualifying student is an individual who was not enrolled in a private school on
23 January 1, 2005, is not enrolled in kindergarten in a private school in the
24 2005-06 school year, and who qualifies for reduced price school meals; and
- 25 • the private school shall annually assess the achievement of each qualifying
26 student and provide information to parents on teacher credentials and school
27 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 a
33 maximum of \$2,000, or \$3,000 minus the total amount of tuition grants
34 received;

35 • a qualifying student is an individual who was not in a private school on January
36 1, 2005 and is not enrolled in kindergarten in a private school in the 2005-06
37 school year; and

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

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

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

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

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

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

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

54 **Monies Appropriated in this Bill:**

55 None

56 **Other Special Clauses:**

57 This bill provides retrospective operation.

58 **Utah Code Sections Affected:**

59 AMENDS:

60 **13-2-1**, as last amended by Chapter 222, Laws of Utah 2002

61 **59-7-106**, as last amended by Chapter 211, Laws of Utah 2002

62 **59-10-114**, as last amended by Chapter 2, Laws of Utah 2004, Fourth Special Session

63 **63-55b-153**, as last amended by Chapters 90, 251 and 328, Laws of Utah 2004

64 ENACTS:

65 **59-7-616**, Utah Code Annotated 1953

66 **59-7-617**, Utah Code Annotated 1953

67 **59-10-136**, Utah Code Annotated 1953

68 **59-10-137**, Utah Code Annotated 1953



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

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

72 **13-2-1. Consumer protection division established -- Functions.**

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

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

76 (a) Chapter 5, Unfair Practices Act;

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

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

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

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

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

82 (g) Chapter 22, Charitable Solicitations Act;

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

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

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

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

87 (l) Chapter 30, Utah Personal Introduction Services Protection Act; ~~[and]~~

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

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

90 certificates.

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

92 **59-7-106. Subtractions from unadjusted income.**

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

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

97 (2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct
98 the loss on the current Utah return. The deduction shall be made by claiming the deduction on
99 the current Utah return which shall be filed by the due date of the return, including extensions.

100 For the purposes of this subsection all capital losses in a given year must be:

101 (a) deducted in the year incurred; or

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

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

106 (4) the decrease in qualified research and basic research expense deduction for federal
107 income tax purposes due to claiming the federal research and development credit under Section
108 41, Internal Revenue Code;

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

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

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

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

117 (9) amounts included in federal taxable income that are due to refunds of taxes
118 imposed for the privilege of doing business, or exercising a corporate franchise, including
119 income, franchise, corporate stock and business and occupation taxes paid by the corporation to
120 Utah, another state of the United States, a foreign country, a United States possession, or the

121 Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income
122 under Section 59-7-105;

123 (10) charitable contributions, to the extent allowed as a subtraction under Section
124 59-7-109, except for amounts claimed as a tax credit for a contribution to a scholarship
125 granting organization in accordance with Section 59-7-616;

126 (11) (a) 50% of the dividends deemed received or received from subsidiaries which are
127 members of the unitary group and are organized or incorporated outside of the United States
128 unless such subsidiaries are included in a combined report under Section 59-7-402 or 59-7-403.

129 In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the
130 dividends deemed received or received, the expense directly attributable to those dividends.

131 Interest expense attributable to excluded dividends shall be determined by multiplying interest
132 expense by a fraction, the numerator of which is the taxpayer's average investment in such
133 dividend paying subsidiaries, and the denominator of which is the taxpayer's average total
134 investment in assets;

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

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

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

150 (13) the amount of gain or loss which is included in unadjusted income but not
151 recognized for federal purposes on stock sold or exchanged by a member of a selling

152 consolidated group as defined in Section 338, Internal Revenue Code, if an election has been
153 made pursuant to Section 338(h)(10), Internal Revenue Code;

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

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

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

164 (16) any interest expense not deducted on the federal corporate return under Section
165 265(b) or 291(e), Internal Revenue Code;

166 (17) 100% of the dividends received from subsidiaries which are insurance companies
167 exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"
168 as defined by Subsection 59-7-101(7); and

169 (18) any amount included in unadjusted income that was derived from money paid by
170 the taxpayer to the program fund and investment income earned on those payments under Title
171 53B, Chapter 8a, Higher Education Savings Incentive Program, that is included in federal
172 taxable income, but only when the monies are used for qualified higher education costs of the
173 beneficiary.

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

175 **59-7-616. Tax credit for contributions to scholarship granting organizations --**

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

177 (1) As used in this section:

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

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

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

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

182 met.

- 183 (ii) "Private school" does not include a home school.
- 184 (b) (i) "Qualifying student" means, except as provided in Subsection (1)(b)(ii), an
185 individual:
- 186 (A) who is enrolled at a private school as a full-time student as determined by the
187 private school and is not participating in a dual enrollment program pursuant to Section
188 53A-11-102.5;
- 189 (B) for whom the private school has on file a release of information form;
- 190 (C) who will be under 19 years of age on the last day of the school year as determined
191 by the private school, or, if the individual is disabled and has not graduated from high school
192 with a regular diploma, will be under 22 years of age on the last day of the school year as
193 determined by the private school; and
- 194 (D) who meets the following criteria:
- 195 (I) the individual was not enrolled at a private school on January 1, 2005; and
- 196 (II) the individual is a member of a household as defined in 7 C.F.R. Sec. 245.2 whose
197 household income as determined under 7 C.F.R. Part 245, Determining Eligibility for Free and
198 Reduced Price Meals and Free Milk in Schools, is less than 100% of the reduced price meals
199 income eligibility guideline for the applicable household size as published by the U.S.
200 Department of Agriculture by notice in the Federal Register.
- 201 (ii) "Qualifying student" does not include a private school student while enrolled in
202 kindergarten during the 2005-06 school year.
- 203 (c) "Release of information form" means a form developed by a private school that:
- 204 (i) states that a parent of a qualifying student consents to the release of the information
205 contained in the school tuition certificate; and
- 206 (ii) is consistent with the requirements of 20 U.S.C. Sec. 1232g, Family Educational
207 Rights and Privacy Act of 1974.
- 208 (d) "Scholarship granting organization" means an organization that:
- 209 (i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code;
- 210 (ii) is incorporated under the laws of the state and has a physical presence in the state;
211 and
- 212 (iii) makes tuition grants to qualifying students to attend private schools in this state.
- 213 (e) "School tuition certificate" means a certificate developed by a private school that:

214 (i) is issued by the private school to the first scholarship granting organization that
215 during the calendar year:

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

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

219 (ii) lists:

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

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

223 (C) the qualifying student's tuition.

224 (2) For taxable years beginning on or after January 1, 2005, a taxpayer may claim a
225 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section
226 for monetary contributions:

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

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

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

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

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

238 (b) listing the amount of the contribution.

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

244 (6) (a) A scholarship granting organization may make a tuition grant during a calendar

245 year to a qualifying student from a contribution for which the scholarship granting organization
246 issues a written statement in accordance with Subsection (4), if the scholarship granting
247 organization during the calendar year:

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

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

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

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

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

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

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

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

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

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

275 (d) The commission shall deposit any penalties the commission collected under this

276 Subsection (6) into the Uniform School Fund.

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

279 Subsection (4):

280 (i) for tuition grants to qualifying students to attend private schools in this state; and

281 (ii) within a 12-month period after the day on which the organization receives the
282 contribution.

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

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

288 (i) the amount that is not spent in accordance with Subsection (7)(a); and

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

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

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

297 (i) a financial audit of its accounts and records; and

298 (ii) a compliance audit prepared for the purpose of determining the scholarship
299 granting organization's compliance with the requirements of this section and Section
300 59-10-136.

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

302 (i) generally accepted auditing and attestation standards promulgated by the American
303 Institute of Certified Public Accountants; and

304 (ii) generally accepted government auditing standards promulgated by the United
305 States General Accounting Office.

306 (9) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

307 commission shall make rules requiring scholarship granting organizations to verify that each
308 tuition grant recipient meets the requirements of a qualifying student under Subsection (1)(b).

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

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

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

317 **59-7-617. Private school requirements -- School tuition certificates -- Enforcement**
318 **-- Orders.**

319 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

338 **(b) If the Division of Consumer Protection finds repeated and willful violations of**
339 **Subsection (2), it shall issue an order that enjoins the private school from issuing a school**
340 **tuition certificate for the subsequent school year.**

341 Section 5. Section **59-10-114** is amended to read:

342 **59-10-114. Additions to and subtractions from federal taxable income of an**
343 **individual.**

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

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

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

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

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

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

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

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

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

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

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

368 (g) except as provided in Subsection (6), for taxable years beginning on or after

369 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
370 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
371 one or more of the following entities:

372 (i) a state other than this state;

373 (ii) the District of Columbia;

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

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

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

380 (i) any distribution received by a resident beneficiary of a nonresident trust of income
381 that was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by
382 any state[-]; and

383 (j) for taxable years beginning on or after January 1, 2005, the amount contributed to a
384 scholarship granting organization in accordance with Section 59-10-136 that is not included in
385 adjusted gross income on the taxpayer's federal income tax return for the taxable year.

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

388 (a) the interest or dividends on obligations or securities of the United States and its
389 possessions or of any authority, commission, or instrumentality of the United States, to the
390 extent includable in gross income for federal income tax purposes but exempt from state
391 income taxes under the laws of the United States, but the amount subtracted under this
392 Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to
393 purchase or carry the obligations or securities described in this Subsection (2)(a), and by any
394 expenses incurred in the production of interest or dividend income described in this Subsection
395 (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in
396 determining federal taxable income;

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

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

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

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

410 (A) paid; or

411 (B) incurred;

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

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

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

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

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

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

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

433 (i) for:

434 (A) the taxpayer;

435 (B) the taxpayer's spouse; and

436 (C) the taxpayer's dependents; and

437 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
438 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

478 and

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

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

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

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

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

491 (A) for qualifying military service; and

492 (B) to the extent that income is included in adjusted gross income on that resident or

493 nonresident individual's federal individual income tax return for that taxable year;

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

498 (A) pension; or
499 (B) survivor benefit; and

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

503 (A) a resident or nonresident individual receives for qualifying military service; or
504 (B) received from a source that constitutes a:

505 (I) pension; or
506 (II) survivor benefit.

507 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
508 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
509 \$4,800, except that:

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

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

516 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
517 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
518 reduced by 50 cents.

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

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

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

527 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
528 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

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

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

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

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

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

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

549 (i) may not:

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

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

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

554 (ii) shall:

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

556 (B) be in writing;

557 (C) be signed by:

558 (I) the governor; and

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

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

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

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

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

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

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

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

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

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

577 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
578 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
579 2000 Form 8814 if for purposes of federal individual income taxes the information contained
580 on 2000 Form 8814 is reported on a form other than Form 8814; and

581 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
582 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
583 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
584 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
585 8814.

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

588 (i) the lesser of:

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

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

591 (I) the child's taxable interest;

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

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

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

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

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

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

605 (i) the entity; or

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

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

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

609 **59-10-136. Tax credit for contributions to scholarship granting organizations --**

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

611 (1) As used in this section:

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

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

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

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

616 (2) For taxable years beginning on or after January 1, 2005, a taxpayer may claim a

617 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section
618 for monetary contributions:

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

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

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

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

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

628 **59-10-137. Refundable tuition tax credit -- Definitions.**

629 (1) As used in this section:

630 (a) "Private school" means a school:

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

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

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

636 (A) who is enrolled at a private school as a full-time student as determined by the
637 private school and is not participating in a dual enrollment program pursuant to Section
638 53A-11-102.5;

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

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

644 (D) who was not enrolled at a private school on January 1, 2005.

645 (ii) "Qualifying student" does not include a private school student while enrolled in
646 kindergarten during the 2005-06 school year.

647 (2) (a) For taxable years beginning on or after January 1, 2005, a taxpayer may claim a

648 refundable tax credit against the taxes imposed by this chapter as provided in this section for
649 amounts paid to a private school for tuition:

650 (i) on behalf of a qualifying student; and

651 (ii) during the taxable year.

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

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

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

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

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

659 **63-55b-153. Repeal dates -- Titles 53, 53A, and 53B.**

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

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

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

663 (4) Subsection 53A-1a-511(7)(c) is repealed July 1, 2007.

664 (5) Section 53A-3-702 is repealed July 1, 2008.

665 (6) Section 53A-17a-150 is repealed July 1, 2008.

666 [(6)] (7) Section 53B-8-104.5 is repealed July 1, 2009.

667 Section 9. **Retrospective operation.**

668 This bill has retrospective operation for taxable years beginning on or after January 1,
669 2005.

Legislative Review Note
as of 11-27-04 2:28 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel