

**INDIVIDUAL INCOME TAX AMENDMENTS
FOR EDUCATION FUNDING**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Patricia W. Jones

LONG TITLE

General Description:

This bill modifies the Individual Income Tax Act and the Higher Education Savings Incentive Program chapter.

Highlighted Provisions:

This bill:

- ▶ modifies the income brackets and amounts of tax for purposes of the individual income tax;
- ▶ requires the State Tax Commission to adjust the income brackets and amounts of tax for inflation or deflation and to make certain other adjustments to the income brackets and amounts of tax;
- ▶ modifies the personal exemption amount that a resident or nonresident individual is required to add to federal taxable income;
- ▶ repeals a subtraction from federal taxable income for federal income tax paid that is made in calculating state individual income tax liability;
- ▶ provides for a nonrefundable state earned income tax credit that is equal to a certain percentage of the federal earned income tax credit;
- ▶ requires the Utah Tax Review Commission to conduct a study during the 2010 interim and report its findings and recommendations to the Executive Appropriations Committee and the Revenue and Taxation Interim Committee; and
- ▶ makes technical changes.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill takes effect for taxable years beginning on or after January 1, 2006.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **53B-8a-106**, as last amended by Chapter 144, Laws of Utah 2000

35 **59-10-103**, as last amended by Chapter 2, Laws of Utah 2004, Fourth Special Session

36 **59-10-104**, as last amended by Chapters 323 and 324, Laws of Utah 2001

37 **59-10-114**, as last amended by Chapter 2, Laws of Utah 2004, Fourth Special Session

38 **59-10-201**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

39 **59-10-205**, as last amended by Chapter 345, Laws of Utah 1995

40 ENACTS:

41 **59-10-136**, Utah Code Annotated 1953

42 **Uncodified Material Affected:**

43 ENACTS UNCODIFIED MATERIAL



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

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

47 **53B-8a-106. Participation agreements for trust.**

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

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

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

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

58 (d) The maximum amount of investments that may be subtracted from federal taxable

59 income of a resident or nonresident individual under Subsection 59-10-114(2)(~~f~~) (i) shall be
60 \$1,200 for each individual beneficiary for the 1996 calendar year and an amount adjusted
61 annually thereafter to reflect increases in the Consumer Price Index.

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

64 (3) (a) Beneficiaries designated in participation agreements must be designated from
65 date of birth through age 18 for the participant to subtract allowable investments from federal
66 taxable income under Subsection 59-10-114(2)(~~f~~)(i).

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

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

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

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

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

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

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

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

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

89 (8) Each participation agreement shall provide that the participation agreement may be

90 canceled upon the terms and conditions, and upon payment of the fees and costs set forth and
91 contained in the board's rules and regulations.

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

93 **59-10-103. Definitions.**

94 (1) As used in this chapter:

95 (a) "Adoption expenses" means:

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

98 (ii) any welfare agency fees or costs;

99 (iii) any child placement service fees or costs;

100 (iv) any legal fees or costs; or

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

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

103 (i) is 18 years of age or older;

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

106 (iii) is not enrolled in:

107 (A) an education program for students with disabilities that is authorized under Section
108 53A-15-301; or

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

110 (c) (i) For purposes of Subsection 59-10-114(2)~~(m)~~(l), "capital gain transaction"

111 means a transaction that results in a:

112 (A) short-term capital gain; or

113 (B) long-term capital gain.

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

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

118 (e) "Corporation" includes:

119 (i) associations;

120 (ii) joint stock companies; and

- 121 (iii) insurance companies.
- 122 (f) "Dependent child with a disability" means an individual 21 years of age or younger
- 123 who:
- 124 (i) (A) is diagnosed by a school district representative under rules adopted by the State
- 125 Board of Education as having a disability classified as:
- 126 (I) autism;
- 127 (II) deafness;
- 128 (III) preschool developmental delay;
- 129 (IV) dual sensory impairment;
- 130 (V) hearing impairment;
- 131 (VI) intellectual disability;
- 132 (VII) multidisability;
- 133 (VIII) orthopedic impairment;
- 134 (IX) other health impairment;
- 135 (X) traumatic brain injury; or
- 136 (XI) visual impairment;
- 137 (B) is not receiving residential services from:
- 138 (I) the Division of Services for People with Disabilities created under Section
- 139 62A-5-102; or
- 140 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
- 141 and
- 142 (C) is enrolled in:
- 143 (I) an education program for students with disabilities that is authorized under Section
- 144 53A-15-301; or
- 145 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
- 146 or
- 147 (ii) is identified under guidelines of the Department of Health as qualified for:
- 148 (A) Early Intervention; or
- 149 (B) Infant Development Services.
- 150 (g) "Employee" is as defined in Section 59-10-401.
- 151 (h) "Employer" is as defined in Section 59-10-401.

152 (i) "Fiduciary" means:

153 (i) a guardian;

154 (ii) a trustee;

155 (iii) an executor;

156 (iv) an administrator;

157 (v) a receiver;

158 (vi) a conservator; or

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

160 (j) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the

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

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

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

164 (l) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all

165 or part of the trust without the consent of a person who has a substantial beneficial interest in

166 the trust and the interest would be adversely affected by the exercise of the settlor's power to

167 revoke or terminate all or part of the trust.

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

169 defined in Section 1222, Internal Revenue Code.

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

171 (o) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a

172 resident estate or trust.

173 (p) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other

174 unincorporated organization:

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

176 carried on; and

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

178 (I) a trust;

179 (II) an estate; or

180 (III) a corporation.

181 (ii) "Partnership" does not include any organization not included under the definition of

182 "partnership" in Section 761, Internal Revenue Code.

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

185 (q) "Qualifying military service" means:

186 (i) in the case of a member of The Army Reserve, The Naval Reserve, The Air Force
187 Reserve, The Marine Corps Reserve, or The Coast Guard Reserve, active duty in accordance
188 with an order received under:

189 (A) 10 U.S.C. Sec. 12301;

190 (B) 10 U.S.C. Sec. 12302;

191 (C) 10 U.S.C. Sec. 12303; or

192 (D) 10 U.S.C. Sec. 12304; or

193 (ii) in the case of a member of The Army National Guard of the United States or The
194 Air National Guard of the United States:

195 (A) active duty in accordance with an order received under:

196 (I) 10 U.S.C. Sec. 12301;

197 (II) 10 U.S.C. Sec. 12302;

198 (III) 10 U.S.C. Sec. 12303; or

199 (IV) 10 U.S.C. Sec. 12304; or

200 (B) service under a call to active service:

201 (I) authorized by the:

202 (Aa) President of the United States; or

203 (Bb) Secretary of Defense of the United States;

204 (II) for a period of more than 30 consecutive days;

205 (III) in accordance with an order received under 32 U.S.C. Sec. 502(f); and

206 (IV) for purposes of responding to a national emergency:

207 (Aa) declared by the President of the United States; and

208 (Bb) supported by federal funds.

209 (r) "Qualifying stock" means stock that is:

210 (i) (A) common; or

211 (B) preferred;

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

213 (A) a resident or nonresident individual; or

214 (B) a partnership if the resident or nonresident individual making a subtraction from
215 federal taxable income in accordance with Subsection 59-10-114(2)~~(m)~~(l):

216 (I) was a partner when the stock was issued; and

217 (II) remains a partner until the last day of the taxable year for which the resident or
218 nonresident individual makes the subtraction from federal taxable income in accordance with
219 Subsection 59-10-114(2)~~(m)~~(l); and

220 (iii) issued:

221 (A) by a Utah small business corporation;

222 (B) on or after January 1, 2003; and

223 (C) for:

224 (I) money; or

225 (II) other property, except for stock or securities.

226 (s) (i) "Resident individual" means:

227 (A) an individual who is domiciled in this state for any period of time during the
228 taxable year, but only for the duration of the period during which the individual is domiciled in
229 this state; or

230 (B) an individual who is not domiciled in this state but:

231 (I) maintains a permanent place of abode in this state; and

232 (II) spends in the aggregate 183 or more days of the taxable year in this state.

233 (ii) For purposes of Subsection (1)(s)(i)(B), a fraction of a calendar day shall be
234 counted as a whole day.

235 (t) "Resident estate" or "resident trust" is as defined in Section 75-7-103.

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

238 (v) "Taxable income" and "state taxable income" are defined as provided in Sections
239 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

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

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

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

- 245 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).
- 246 (y) (i) "Utah small business corporation" means a corporation that:
- 247 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue
- 248 Code;
- 249 (B) except as provided in Subsection (1)(y)(ii), meets the requirements of Section
- 250 1244(c)(1)(C), Internal Revenue Code; and
- 251 (C) has its commercial domicile in this state.
- 252 (ii) Notwithstanding Subsection (1)(y)(i)(B), the time period described in Section
- 253 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a
- 254 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the
- 255 resident or nonresident individual makes a subtraction from federal taxable income in
- 256 accordance with Subsection 59-10-114(2)[~~(m)~~](1).
- 257 (z) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian
- 258 Tribe of the Uintah and Ouray Reservation.
- 259 (aa) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.
- 260 (bb) "Wages" is as defined in Section 59-10-401.
- 261 (2) (a) Any term used in this chapter has the same meaning as when used in
- 262 comparable context in the laws of the United States relating to federal income taxes unless a
- 263 different meaning is clearly required.
- 264 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
- 265 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
- 266 federal income taxes that are in effect for the taxable year.
- 267 (c) Any reference to a specific section of the Internal Revenue Code or other provision
- 268 of the laws of the United States relating to federal income taxes shall include any
- 269 corresponding or comparable provisions of the Internal Revenue Code as hereafter amended,
- 270 redesignated, or reenacted.
- 271 Section 3. Section **59-10-104** is amended to read:
- 272 **59-10-104. Tax basis -- Rates -- Exemption.**
- 273 (1) Except as provided in Subsection [~~(4)~~] (5), for taxable years beginning on or after
- 274 January 1, [~~2001~~] 2006, a tax is imposed on the state taxable income, as defined in Section
- 275 59-10-112, of every resident individual as provided in this section.

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

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

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

294 If the state taxable income is:	The tax is:
295 Less than or equal to [\$1,726] <u>\$3,280</u>	2.3% of the state taxable income
296 Greater than [\$1,726] <u>\$3,280</u> but less than or equal	[\$40] <u>\$75</u> , plus 3.3% of state taxable
297 to [\$3,450] <u>\$6,560</u>	income greater than [\$1,726] <u>\$3,280</u>
298 Greater than [\$3,450] <u>\$6,560</u> but less than or equal	[\$97] <u>\$183</u> , plus 4.2% of state taxable
299 to [\$5,176] <u>\$9,840</u>	income greater than [\$3,450] <u>\$6,560</u>
300 Greater than [\$5,176] <u>\$9,840</u> but less than or equal	[\$169] <u>\$321</u> , plus 5.2% of state taxable
301 to [\$6,900] <u>\$13,120</u>	income greater than [\$5,176] <u>\$9,840</u>
302 Greater than [\$6,900] <u>\$13,120</u> but less than or equal	[\$259] <u>\$492</u> , plus 6% of state taxable
303 to [\$8,626] <u>\$16,400</u>	income greater than [\$6,900] <u>\$13,120</u>
304 Greater than [\$8,626] <u>\$16,400</u>	[\$362] <u>\$689</u> , plus 7% of state taxable
305	income greater than [\$8,626] <u>\$16,400</u>

306 (4) (a) For taxable years beginning on or after January 1, 2007, the commission shall:

307 (i) make the following adjustments to the income brackets under Subsection (2):
308 (A) increase or decrease the income brackets under Subsection (2) by a percentage
309 equal to the percentage difference between the consumer price index for the preceding calendar
310 year and the consumer price index for calendar year 2005; and
311 (B) after making an increase or decrease under Subsection (4)(a)(i)(A), round the
312 income brackets under Subsection (2) to the nearest \$10;
313 (ii) after making the adjustments described in Subsection (4)(a)(i) to the income
314 brackets under Subsection (2), adjust the income brackets under Subsection (3) such that for
315 each income bracket under Subsection (2) there is a corresponding income bracket under
316 Subsection (3) that is equal to the product of:
317 (A) each income bracket under Subsection (2); and
318 (B) two; and
319 (iii) to the extent necessary to reflect an adjustment under Subsection (4)(a)(i) or (ii),
320 increase or decrease the amount of tax under Subsection (2) or (3) prior to adding in the portion
321 of the tax calculated as a percentage of state taxable income.
322 (b) The commission may not increase or decrease the tax rate percentages provided in
323 Subsection (2) or (3).
324 (c) For purposes of Subsection (4)(a)(i), the commission shall calculate the consumer
325 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.
326 [~~4~~] (5) This section does not apply to a resident individual exempt from taxation
327 under Section 59-10-104.1.
328 Section 4. Section **59-10-114** is amended to read:
329 **59-10-114. Additions to and subtractions from federal taxable income of an**
330 **individual.**
331 (1) There shall be added to federal taxable income of a resident or nonresident
332 individual:
333 (a) the amount of any income tax imposed by this or any predecessor Utah individual
334 income tax law and the amount of any income tax imposed by the laws of another state, the
335 District of Columbia, or a possession of the United States, to the extent deducted from federal
336 adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal
337 taxable income;

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

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

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

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

346 ~~[(d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue~~
347 ~~Code;]~~

348 (d) for taxable years beginning on or after January 1, 2006, the amounts calculated
349 under Subsection (7);

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

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

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

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

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

361 (i) a state other than this state;

362 (ii) the District of Columbia;

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

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

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

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

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

374 (a) the interest or dividends on obligations or securities of the United States and its
375 possessions or of any authority, commission, or instrumentality of the United States, to the
376 extent includable in gross income for federal income tax purposes but exempt from state
377 income taxes under the laws of the United States, but the amount subtracted under this
378 Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to
379 purchase or carry the obligations or securities described in this Subsection (2)(a), and by any
380 expenses incurred in the production of interest or dividend income described in this Subsection
381 (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in
382 determining federal taxable income;

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

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

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

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

396 (A) paid; or

397 (B) incurred;

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

399 (iii) any year in which the resident or nonresident individual may claim the federal

400 adoption expenses credit under Section 23, Internal Revenue Code;

401 ~~[(d)]~~ (c) amounts received by taxpayers under age 65 as retirement income which, for
402 purposes of this section, means pensions and annuities, paid from an annuity contract
403 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),
404 Internal Revenue Code, or purchased by an employee under a plan which meets the
405 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or
406 political subdivision thereof, or the District of Columbia, to the employee involved or the
407 surviving spouse;

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

410 ~~[(f)]~~ (e) 75% of the amount of the personal exemption, as defined and calculated in the
411 Internal Revenue Code, for each dependent child with a disability and adult with a disability
412 who is claimed as a dependent on a taxpayer's return;

413 ~~[(g)]~~ (f) any amount included in federal taxable income that was received pursuant to
414 any federal law enacted in 1988 to provide reparation payments, as damages for human
415 suffering, to United States citizens and resident aliens of Japanese ancestry who were interned
416 during World War II;

417 ~~[(h)]~~ (g) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during
418 the taxable year for health care insurance, as defined in Title 31A, Chapter 1, General
419 Provisions:

420 (i) for:

421 (A) the taxpayer;

422 (B) the taxpayer's spouse; and

423 (C) the taxpayer's dependents; and

424 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
425 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

426 ~~[(i)]~~ (h) (i) except as otherwise provided in this Subsection (2)~~[(i)]~~(h), the amount of a
427 contribution made during the taxable year on behalf of the taxpayer to a medical care savings
428 account and interest earned on a contribution to a medical care savings account established
429 pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the
430 contribution is accepted by the account administrator as provided in the Medical Care Savings

431 Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal
432 individual income tax return pursuant to Section 220, Internal Revenue Code; and

433 (ii) a contribution deductible under this Subsection (2)~~(f)~~(h) may not exceed either of
434 the following:

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

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

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

442 (II) who file a joint return, but do not qualify under Subsection (2)~~(f)~~(h)(ii)(A);

443 ~~(j)~~ (i) the amount included in federal taxable income that was derived from money
444 paid by the taxpayer to the program fund under Title 53B, Chapter 8a, Higher Education
445 Savings Incentive Program, not to exceed amounts determined under Subsection
446 53B-8a-106(1)(d), and investment income earned on participation agreements under
447 Subsection 53B-8a-106(1) that is included in federal taxable income, but only when the funds
448 are used for qualified higher education costs of the beneficiary;

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

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

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

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

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

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

462 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:
463 (I) to purchase qualifying stock in a Utah small business corporation; and
464 (II) within a 12-month period after the day on which the capital gain transaction occurs;
465 and
466 (C) if, prior to the purchase of the qualifying stock described in Subsection
467 (2)[(m)](1)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in
468 the Utah small business corporation that issued the qualifying stock; and
469 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
470 commission may make rules:
471 (A) defining the term "gross proceeds"; and
472 (B) for purposes of Subsection (2)[(m)](1)(i)(C), prescribing the circumstances under
473 which a resident or nonresident individual has an ownership interest in a Utah small business
474 corporation; and
475 [(m)] (m) (i) except as provided in Subsection (2)[(m)](m)(ii), for the taxable year
476 beginning on or after January 1, 2004, but beginning on or before December 31, 2004, income
477 a resident or nonresident individual receives:
478 (A) for qualifying military service; and
479 (B) to the extent that income is included in adjusted gross income on that resident or
480 nonresident individual's federal individual income tax return for that taxable year;
481 (ii) notwithstanding Subsection (2)[(m)](m)(i), a subtraction from federal taxable
482 income is not allowed under Subsection (2)[(m)](m)(i) for income included in adjusted gross
483 income on a resident or nonresident individual's federal individual income tax return for that
484 taxable year if that income is received from a source that constitutes a:
485 (A) pension; or
486 (B) survivor benefit; and
487 (iii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
488 for purposes of Subsections (1)[(m)](m)(i) and (ii), the commission may by rule define what
489 constitutes income:
490 (A) a resident or nonresident individual receives for qualifying military service; or
491 (B) received from a source that constitutes a:
492 (I) pension; or

493 (II) survivor benefit.

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

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

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

503 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
504 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
505 reduced by 50 cents.

506 (b) For purposes of Subsection (2)~~(c)~~(d), the amount of the personal retirement
507 exemption shall be further reduced according to the following schedule:

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

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

514 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
515 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

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

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

531 (4) (a) A subtraction for an amount described in Subsection (2)~~(h)~~(k) is allowed only
532 if:

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

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

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

537 (i) may not:

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

539 (B) provide a subtraction under this section greater than or different from the

540 subtraction described in Subsection (2)~~(h)~~(k); or

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

542 (ii) shall:

543 (A) provide for the implementation of the subtraction described in Subsection

544 ~~(2)(h)~~(k);

545 (B) be in writing;

546 (C) be signed by:

547 (I) the governor; and

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

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

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

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

554 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the

555 subtraction permitted under Subsection (2)(~~f~~)(k) is not allowed for taxable years beginning on
556 or after the January 1 following the termination of the agreement.

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

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

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

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

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

566 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
567 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
568 2000 Form 8814 if for purposes of federal individual income taxes the information contained
569 on 2000 Form 8814 is reported on a form other than Form 8814; and

570 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
571 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
572 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
573 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
574 8814.

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

577 (i) the lesser of:

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

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

580 (I) the child's taxable interest;

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

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

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

584 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences
585 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be

586 added to federal taxable income of a resident or nonresident individual if, as annually
587 determined by the commission:

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

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

594 (i) the entity; or

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

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

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

598 (i) "disabled person" means:

599 (A) a dependent child with a disability; or

600 (B) an adult with a disability;

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

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

603 (B) for:

604 (I) an individual;

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

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

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

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

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

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

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

616 (A) for:

- 617 (I) if the individual is a disabled person, the individual;
618 (II) if the individual's spouse is a disabled person, the individual's spouse; and
619 (III) if one or more of the individual's dependents is a disabled person, the number of
620 dependents that are disabled persons;
621 (B) on the resident or nonresident individual's federal individual income tax return; and
622 (C) for the same taxable year as the taxable year for which the resident or nonresident
623 individual is filing a tax return under this chapter;
624 (vi) "personal exemptions remaining" means the number of personal exemptions by
625 which the personal exemptions claimed exceeds the personal exemptions claimed for disabled
626 persons; and
627 (vii) "personal exemption value" means the total dollar amount a resident or
628 nonresident individual is allowed for the personal exemptions claimed:
629 (A) on the resident or nonresident individual's federal individual income tax return for
630 the same taxable year as the taxable year for which the resident or nonresident individual is
631 filing a tax return under this chapter; and
632 (B) under Section 151, Internal Revenue Code.
633 (b) For purposes of Subsection (1)(d), a resident or nonresident individual shall add the
634 following amounts to the resident or nonresident individual's federal taxable income for a
635 taxable year:
636 (i) the product of:
637 (A) the personal exemptions claimed for disabled persons;
638 (B) the personal exemption amount; and
639 (C) .25; and
640 (ii) for any personal exemptions remaining, the sum of:
641 (A) for the first personal exemption remaining, the product of:
642 (I) the personal exemption amount; and
643 (II) .25;
644 (B) for the second personal exemption remaining, the product of:
645 (I) the personal exemption amount; and
646 (II) .25;
647 (C) for the third personal exemption remaining, the product of:

- 648 (I) the personal exemption amount; and
- 649 (II) .50;
- 650 (D) for the fourth personal exemption remaining, the product of:
- 651 (I) the personal exemption amount; and
- 652 (II) .75;
- 653 (E) for the fifth personal exemption remaining, the product of:
- 654 (I) the personal exemption amount; and
- 655 (II) .75; and
- 656 (F) for any personal exemptions that exceed the fifth personal exemption remaining,
- 657 the product of:
- 658 (I) the number of personal exemptions that exceed the fifth personal exemption
- 659 remaining; and
- 660 (II) the personal exemption amount.

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

662 **59-10-136. Nonrefundable earned income tax credit.**

663 (1) For taxable years beginning on or after January 1, 2006, a taxpayer may claim as

664 provided in this section a nonrefundable earned income tax credit equal to 5% of the amount

665 the taxpayer is allowed as a federal earned income tax credit in accordance with Section 32,

666 Internal Revenue Code, for the taxable year.

667 (2) A taxpayer may not carry forward or carry back any earned income tax credit

668 allowed under this section.

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

670 **59-10-201. Taxation of resident trusts and estates.**

671 (1) A tax determined in accordance with the [~~rates~~] income brackets prescribed by

672 Section 59-10-104 for individuals filing separately is imposed for each taxable year on the state

673 taxable income of each resident estate or trust, except for trusts taxed as corporations.

674 (2) A resident estate or trust shall be allowed the credit provided in Section 59-10-106,

675 relating to an income tax imposed by another state, except that the limitation shall be computed

676 by reference to the taxable income of the estate or trust.

677 (3) The property of the trusts established in Title 53B, Chapter 8a, Higher Education

678 Savings Incentive Program, and Title 53B, Chapter 8b, Higher Education Supplemental

679 Savings Incentive Program, and their income from operations and investments are exempt from
680 all taxation by the state under this chapter.

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

682 **59-10-205. Tax on income derived from Utah sources.**

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

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

689 Section 8. **Utah Tax Review Commission study.**

690 (1) During the 2010 interim, the Utah Tax Review Commission shall:

691 (a) study the changes made by this bill to the individual income tax system, including
692 the fiscal impacts of those changes; and

693 (b) make findings and recommendations as to whether the changes made by this bill to
694 the individual income tax system should be:

695 (i) continued;

696 (ii) modified; or

697 (iii) repealed.

698 (2) On or before the November 2010 interim meeting, the Utah Tax Review

699 Commission shall report its findings and recommendations to:

700 (a) the Executive Appropriations Committee; and

701 (b) the Revenue and Taxation Interim Committee.

702 Section 9. **Effective date.**

703 This bill takes effect for taxable years beginning on or after January 1, 2006.

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

State Impact

Passage of this bill could increase the Uniform School Fund by \$110,000,000 in FY 2007. The Tax Commission would require an appropriation of \$29,400 to implement the provisions of the bill.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Uniform School Fund	\$0	\$29,700	\$0	\$110,000,000
TOTAL	\$0	\$29,700	\$0	\$110,000,000

Individual and Business Impact

Fiscal impact on individuals will vary based on family size and AGI levels.
