

**Representative Patricia W. Jones** proposes the following substitute bill:

**INDIVIDUAL INCOME TAX AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Patricia W. Jones**

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**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



26           ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**

28           None

29 **Other Special Clauses:**

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

31 **Utah Code Sections Affected:**

32 AMENDS:

33           **53B-8a-106**, as last amended by Chapter 144, Laws of Utah 2000

34           **59-10-103**, as last amended by Chapter 2, Laws of Utah 2004, Fourth Special Session

35           **59-10-104**, as last amended by Chapters 323 and 324, Laws of Utah 2001

36           **59-10-114**, as last amended by Chapter 2, Laws of Utah 2004, Fourth Special Session

37           **59-10-201**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

38           **59-10-205**, as last amended by Chapter 345, Laws of Utah 1995

39 ENACTS:

40           **59-10-136**, Utah Code Annotated 1953

41 **Uncodified Material Affected:**

42 ENACTS UNCODIFIED MATERIAL



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

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

46           **53B-8a-106. Participation agreements for trust.**

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

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

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

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

57 (d) The maximum amount of investments that may be subtracted from federal taxable  
58 income of a resident or nonresident individual under Subsection 59-10-114(2)(~~f~~) (i) shall be  
59 \$1,200 for each individual beneficiary for the 1996 calendar year and an amount adjusted  
60 annually thereafter to reflect increases in the Consumer Price Index.

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

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

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

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

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

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

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

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

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

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

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

88 (8) Each participation agreement shall provide that the participation agreement may be  
89 canceled upon the terms and conditions, and upon payment of the fees and costs set forth and  
90 contained in the board's rules and regulations.

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

92 **59-10-103. Definitions.**

93 (1) As used in this chapter:

94 (a) "Adoption expenses" means:

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

97 (ii) any welfare agency fees or costs;

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

99 (iv) any legal fees or costs; or

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

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

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

103 (ii) is eligible for services under Title 62A, Chapter 5, Services to People with

104 Disabilities; and

105 (iii) is not enrolled in:

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

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

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

110 means a transaction that results in a:

111 (A) short-term capital gain; or

112 (B) long-term capital gain.

113 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

114 the commission may by rule define the term "transaction."

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

117 (e) "Corporation" includes:

118 (i) associations;

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

- 150 (h) "Employer" is as defined in Section 59-10-401.
- 151 (i) "Fiduciary" means:
- 152 (i) a guardian;
- 153 (ii) a trustee;
- 154 (iii) an executor;
- 155 (iv) an administrator;
- 156 (v) a receiver;
- 157 (vi) a conservator; or
- 158 (vii) any person acting in any fiduciary capacity for any individual.
- 159 (j) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
- 160 homesteaded land that was held to have been diminished from the Uintah and Ouray
- 161 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).
- 162 (k) "Individual" means a natural person and includes aliens and minors.
- 163 (l) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all
- 164 or part of the trust without the consent of a person who has a substantial beneficial interest in
- 165 the trust and the interest would be adversely affected by the exercise of the settlor's power to
- 166 revoke or terminate all or part of the trust.
- 167 (m) For purposes of Subsection 59-10-114(2)~~(m)~~(l), "long-term capital gain" is as
- 168 defined in Section 1222, Internal Revenue Code.
- 169 (n) "Nonresident individual" means an individual who is not a resident of this state.
- 170 (o) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
- 171 resident estate or trust.
- 172 (p) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
- 173 unincorporated organization:
- 174 (A) through or by means of which any business, financial operation, or venture is
- 175 carried on; and
- 176 (B) which is not, within the meaning of this chapter:
- 177 (I) a trust;
- 178 (II) an estate; or
- 179 (III) a corporation.
- 180 (ii) "Partnership" does not include any organization not included under the definition of

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

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

184 (q) "Qualifying military service" means:

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

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

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

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

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

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

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

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

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

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

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

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

200 (I) authorized by the:

201 (Aa) President of the United States; or

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

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

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

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

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

207 (Bb) supported by federal funds.

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

209 (i) (A) common; or

210 (B) preferred;

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

- 212 (A) a resident or nonresident individual; or  
213 (B) a partnership if the resident or nonresident individual making a subtraction from  
214 federal taxable income in accordance with Subsection 59-10-114(2)~~(m)~~(l):  
215 (I) was a partner when the stock was issued; and  
216 (II) remains a partner until the last day of the taxable year for which the resident or  
217 nonresident individual makes the subtraction from federal taxable income in accordance with  
218 Subsection 59-10-114(2)~~(m)~~(l); and  
219 (iii) issued:  
220 (A) by a Utah small business corporation;  
221 (B) on or after January 1, 2003; and  
222 (C) for:  
223 (I) money; or  
224 (II) other property, except for stock or securities.  
225 (s) (i) "Resident individual" means:  
226 (A) an individual who is domiciled in this state for any period of time during the  
227 taxable year, but only for the duration of the period during which the individual is domiciled in  
228 this state; or  
229 (B) an individual who is not domiciled in this state but:  
230 (I) maintains a permanent place of abode in this state; and  
231 (II) spends in the aggregate 183 or more days of the taxable year in this state.  
232 (ii) For purposes of Subsection (1)(s)(i)(B), a fraction of a calendar day shall be  
233 counted as a whole day.  
234 (t) "Resident estate" or "resident trust" is as defined in Section 75-7-103.  
235 (u) For purposes of Subsection 59-10-114(2)~~(m)~~(l), "short-term capital gain" is as  
236 defined in Section 1222, Internal Revenue Code.  
237 (v) "Taxable income" and "state taxable income" are defined as provided in Sections  
238 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.  
239 (w) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or  
240 trust, whose income is subject in whole or part to the tax imposed by this chapter.  
241 (x) "Uintah and Ouray Reservation" means the lands recognized as being included  
242 within the Uintah and Ouray Reservation in:



- 243 (i) Hagen v. Utah, 510 U.S. 399 (1994); and  
 244 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).  
 245 (y) (i) "Utah small business corporation" means a corporation that:  
 246 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue  
 247 Code;  
 248 (B) except as provided in Subsection (1)(y)(ii), meets the requirements of Section  
 249 1244(c)(1)(C), Internal Revenue Code; and  
 250 (C) has its commercial domicile in this state.  
 251 (ii) Notwithstanding Subsection (1)(y)(i)(B), the time period described in Section  
 252 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a  
 253 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the  
 254 resident or nonresident individual makes a subtraction from federal taxable income in  
 255 accordance with Subsection 59-10-114(2)~~(m)~~(1).  
 256 (z) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian  
 257 Tribe of the Uintah and Ouray Reservation.  
 258 (aa) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.  
 259 (bb) "Wages" is as defined in Section 59-10-401.  
 260 (2) (a) Any term used in this chapter has the same meaning as when used in  
 261 comparable context in the laws of the United States relating to federal income taxes unless a  
 262 different meaning is clearly required.  
 263 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall  
 264 mean the Internal Revenue Code or other provisions of the laws of the United States relating to  
 265 federal income taxes that are in effect for the taxable year.  
 266 (c) Any reference to a specific section of the Internal Revenue Code or other provision  
 267 of the laws of the United States relating to federal income taxes shall include any  
 268 corresponding or comparable provisions of the Internal Revenue Code as hereafter amended,  
 269 redesignated, or reenacted.  
 270 Section 3. Section **59-10-104** is amended to read:  
 271 **59-10-104. Tax basis -- Rates -- Exemption.**  
 272 (1) Except as provided in Subsection ~~(4)~~ (5), for taxable years beginning on or after  
 273 January 1, ~~[2001]~~ 2006, a tax is imposed on the state taxable income, as defined in Section

274 59-10-112, of every resident individual as provided in this section.

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

278 If the state taxable income is:	The tax is:
279 Less than or equal to <del>[\$863]</del> <u>\$2,420</u>	2.3% of the state taxable income
280 Greater than <del>[\$863]</del> <u>\$2,420</u> but less than	<del>[\$20]</del> <u>\$56</u> , plus 3.3% of state taxable
281 or equal to <del>[\$1,726]</del> <u>\$4,830</u>	income greater than <del>[\$863]</del> <u>\$2,420</u>
282 Greater than <del>[\$1,726]</del> <u>\$4,830</u> but less than	<del>[\$48]</del> <u>\$135</u> , plus 4.2% of state taxable
283 or equal to <del>[\$2,588]</del> <u>\$7,250</u>	income greater than <del>[\$1,726]</del> <u>\$4,830</u>
284 Greater than <del>[\$2,588]</del> <u>\$7,250</u> but less than	<del>[\$85]</del> <u>\$237</u> , plus 5.2% of state taxable
285 or equal to <del>[\$3,450]</del> <u>\$9,660</u>	income greater than <del>[\$2,588]</del> <u>\$7,250</u>
286 Greater than <del>[\$3,450]</del> <u>\$9,660</u> but less than	<del>[\$129]</del> <u>\$362</u> , plus 6% of state taxable
287 or equal to <del>[\$4,313]</del> <u>\$12,080</u>	income greater than <del>[\$3,450]</del> <u>\$9,660</u>
288 Greater than <del>[\$4,313]</del> <u>\$12,080</u>	<del>[\$181]</del> <u>\$507</u> , plus 7% of state taxable
289	income greater than <del>[\$4,313]</del> <u>\$12,080</u>

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

293 If the state taxable income is:	The tax is:
294 Less than or equal to <del>[\$1,726]</del> <u>\$4,840</u>	2.3% of the state taxable income
295 Greater than <del>[\$1,726]</del> <u>\$4,840</u> but less than	<del>[\$40]</del> <u>\$111</u> , plus 3.3% of state taxable
296 or equal to <del>[\$3,450]</del> <u>\$9,660</u>	income greater than <del>[\$1,726]</del> <u>\$4,840</u>
297 Greater than <del>[\$3,450]</del> <u>\$9,660</u> but less than	<del>[\$97]</del> <u>\$270</u> , plus 4.2% of state taxable
298 or equal to <del>[\$5,176]</del> <u>\$14,500</u>	income greater than <del>[\$3,450]</del> <u>\$9,660</u>
299 Greater than <del>[\$5,176]</del> <u>\$14,500</u> but less than	<del>[\$169]</del> <u>\$474</u> , plus 5.2% of state taxable
300 or equal to <del>[\$6,900]</del> <u>\$19,320</u>	income greater than <del>[\$5,176]</del> <u>\$14,500</u>
301 Greater than <del>[\$6,900]</del> <u>\$19,320</u> but less than	<del>[\$259]</del> <u>\$724</u> , plus 6% of state taxable
302 or equal to <del>[\$8,626]</del> <u>\$24,160</u>	income greater than <del>[\$6,900]</del> <u>\$19,320</u>
303 Greater than <del>[\$8,626]</del> <u>\$24,160</u>	<del>[\$362]</del> <u>\$1,015</u> , plus 7% of state taxable
304	income greater than <del>[\$8,626]</del> <u>\$24,160</u>

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

306 (i) make the following adjustments to the income brackets under Subsection (2):

307 (A) increase or decrease the income brackets under Subsection (2) by a percentage

308 equal to the percentage difference between the consumer price index for the preceding calendar

309 year and the consumer price index for calendar year 2005; and

310 (B) after making an increase or decrease under Subsection (4)(a)(i)(A), round the

311 income brackets under Subsection (2) to the nearest \$10;

312 (ii) after making the adjustments described in Subsection (4)(a)(i) to the income

313 brackets under Subsection (2), adjust the income brackets under Subsection (3) such that for

314 each income bracket under Subsection (2) there is a corresponding income bracket under

315 Subsection (3) that is equal to the product of:

316 (A) each income bracket under Subsection (2); and

317 (B) two; and

318 (iii) to the extent necessary to reflect an adjustment under Subsection (4)(a)(i) or (ii).

319 increase or decrease the amount of tax under Subsection (2) or (3) prior to adding in the portion

320 of the tax calculated as a percentage of state taxable income.

321 (b) The commission may not increase or decrease the tax rate percentages provided in

322 Subsection (2) or (3).

323 (c) For purposes of Subsection (4)(a)(i), the commission shall calculate the consumer

324 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

325 ~~[(4)]~~ (5) This section does not apply to a resident individual exempt from taxation

326 under Section 59-10-104.1.

327 Section 4. Section **59-10-114** is amended to read:

328 **59-10-114. Additions to and subtractions from federal taxable income of an**

329 **individual.**

330 (1) There shall be added to federal taxable income of a resident or nonresident

331 individual:

332 (a) the amount of any income tax imposed by this or any predecessor Utah individual

333 income tax law and the amount of any income tax imposed by the laws of another state, the

334 District of Columbia, or a possession of the United States, to the extent deducted from federal

335 adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal

336 taxable income;

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

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

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

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

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

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

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

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

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

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

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

360 (i) a state other than this state;

361 (ii) the District of Columbia;

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

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

365 (h) any distribution received by a resident beneficiary of a resident trust of income that  
366 was taxed at the trust level for federal tax purposes, but was subtracted from state taxable

367 income of the trust pursuant to Subsection 59-10-202(2)(c); and

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

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

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

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

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

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

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

395 (A) paid; or

396 (B) incurred;

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

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

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

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

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

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

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

419 (i) for:

420 (A) the taxpayer;

421 (B) the taxpayer's spouse; and

422 (C) the taxpayer's dependents; and

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

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

429 contribution is accepted by the account administrator as provided in the Medical Care Savings  
430 Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal  
431 individual income tax return pursuant to Section 220, Internal Revenue Code; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

464 and

465 (C) if, prior to the purchase of the qualifying stock described in Subsection

466 (2)[~~(m)~~](1)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in

467 the Utah small business corporation that issued the qualifying stock; and

468 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

469 commission may make rules:

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

471 (B) for purposes of Subsection (2)[~~(m)~~](1)(i)(C), prescribing the circumstances under

472 which a resident or nonresident individual has an ownership interest in a Utah small business

473 corporation; and

474 [~~(n)~~] (m) (i) except as provided in Subsection (2)[~~(n)~~](m)(ii), for the taxable year

475 beginning on or after January 1, 2004, but beginning on or before December 31, 2004, income

476 a resident or nonresident individual receives:

477 (A) for qualifying military service; and

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

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

480 (ii) notwithstanding Subsection (2)[~~(n)~~](m)(i), a subtraction from federal taxable

481 income is not allowed under Subsection (2)[~~(n)~~](m)(i) for income included in adjusted gross

482 income on a resident or nonresident individual's federal individual income tax return for that

483 taxable year if that income is received from a source that constitutes a:

484 (A) pension; or

485 (B) survivor benefit; and

486 (iii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

487 for purposes of Subsections (1)[~~(n)~~](m)(i) and (ii), the commission may by rule define what

488 constitutes income:

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

490 (B) received from a source that constitutes a:



491 (I) pension; or

492 (II) survivor benefit.

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

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

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

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

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

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

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

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

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

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

522 deductible as retirement income of such spouse.

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

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

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

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

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

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

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

536 (i) may not:

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

538 (B) provide a subtraction under this section greater than or different from the  
539 subtraction described in Subsection (2)(~~h~~)(k); or

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

541 (ii) shall:

542 (A) provide for the implementation of the subtraction described in Subsection  
543 (2)(~~h~~)(k);

544 (B) be in writing;

545 (C) be signed by:

546 (I) the governor; and

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

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

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

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

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

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

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

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

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

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

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

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

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

576 (i) the lesser of:

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

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

579 (I) the child's taxable interest;

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

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

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

583 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences

584 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be  
585 added to federal taxable income of a resident or nonresident individual if, as annually  
586 determined by the commission:

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

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

593 (i) the entity; or

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

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

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

597 (i) "disabled person" means:

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

599 (B) an adult with a disability;

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

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

602 (B) for:

603 (I) an individual;

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

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

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

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

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

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

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

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

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

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

661 **59-10-136. Nonrefundable earned income tax credit.**

662 (1) For taxable years beginning on or after January 1, 2006, a taxpayer may claim as  
663 provided in this section a nonrefundable earned income tax credit equal to 5% of the amount  
664 the taxpayer is allowed as a federal earned income tax credit in accordance with Section 32,  
665 Internal Revenue Code, for the taxable year.

666 (2) A taxpayer may not carry forward or carry back any earned income tax credit  
667 allowed under this section.

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

669 **59-10-201. Taxation of resident trusts and estates.**

670 (1) A tax determined in accordance with the [rates] income brackets prescribed by  
671 Section 59-10-104 for individuals filing separately is imposed for each taxable year on the state  
672 taxable income of each resident estate or trust, except for trusts taxed as corporations.

673 (2) A resident estate or trust shall be allowed the credit provided in Section 59-10-106,  
674 relating to an income tax imposed by another state, except that the limitation shall be computed  
675 by reference to the taxable income of the estate or trust.

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

677 Savings Incentive Program, and Title 53B, Chapter 8b, Higher Education Supplemental  
678 Savings Incentive Program, and their income from operations and investments are exempt from  
679 all taxation by the state under this chapter.

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

681 **59-10-205. Tax on income derived from Utah sources.**

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

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

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

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

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

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

694 (i) continued;

695 (ii) modified; or

696 (iii) repealed.

697 (2) On or before the November 2010 interim meeting, the Utah Tax Review  
698 Commission shall report its findings and recommendations to:

699 (a) the Executive Appropriations Committee; and

700 (b) the Revenue and Taxation Interim Committee.

701 Section 9. **Effective date.**

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