

**INDIVIDUAL INCOME TAX - SUBTRACTION  
FOR CERTAIN MILITARY INCOME**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Howard A. Stephenson**

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**LONG TITLE**

**General Description:**

This bill amends the Individual Income Tax Act relating to a subtraction for certain military income.

**Highlighted Provisions:**

This bill:

► amends a subtraction for certain military income by repealing an ending date for the application of the subtraction.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

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

**Utah Code Sections Affected:**

AMENDS:

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

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

Section 1. Section **59-10-114** is amended to read:

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



- 28           (1) There shall be added to federal taxable income of a resident or nonresident  
29 individual:
- 30           (a) the amount of any income tax imposed by this or any predecessor Utah individual  
31 income tax law and the amount of any income tax imposed by the laws of another state, the  
32 District of Columbia, or a possession of the United States, to the extent deducted from federal  
33 adjusted gross income, as defined by Section 62, Internal Revenue Code, in determining federal  
34 taxable income;
- 35           (b) a lump sum distribution that the taxpayer does not include in adjusted gross income  
36 on the taxpayer's federal individual income tax return for the taxable year;
- 37           (c) for taxable years beginning on or after January 1, 2002, the amount of a child's  
38 income calculated under Subsection (5) that:
- 39           (i) a parent elects to report on the parent's federal individual income tax return for the  
40 taxable year; and
- 41           (ii) the parent does not include in adjusted gross income on the parent's federal  
42 individual income tax return for the taxable year;
- 43           (d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue  
44 Code;
- 45           (e) a withdrawal from a medical care savings account and any penalty imposed in the  
46 taxable year if:
- 47           (i) the taxpayer did not deduct or include the amounts on the taxpayer's federal  
48 individual income tax return pursuant to Section 220, Internal Revenue Code; and
- 49           (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2);
- 50           (f) the amount refunded to a participant under Title 53B, Chapter 8a, Higher Education  
51 Savings Incentive Program, in the year in which the amount is refunded;
- 52           (g) except as provided in Subsection (6), for taxable years beginning on or after  
53 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after  
54 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by  
55 one or more of the following entities:
- 56           (i) a state other than this state;
- 57           (ii) the District of Columbia;
- 58           (iii) a political subdivision of a state other than this state; or

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

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

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

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

69 (a) the interest or dividends on obligations or securities of the United States and its  
70 possessions or of any authority, commission, or instrumentality of the United States, to the  
71 extent includable in gross income for federal income tax purposes but exempt from state  
72 income taxes under the laws of the United States, but the amount subtracted under this  
73 Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to  
74 purchase or carry the obligations or securities described in this Subsection (2)(a), and by any  
75 expenses incurred in the production of interest or dividend income described in this Subsection  
76 (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in  
77 determining federal taxable income;

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

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

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

89 (i) regardless of whether a court issues an order granting the adoption, the taxable year

90 in which the adoption expenses are:

91 (A) paid; or

92 (B) incurred;

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

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

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

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

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

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

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

114 (i) for:

115 (A) the taxpayer;

116 (B) the taxpayer's spouse; and

117 (C) the taxpayer's dependents; and

118 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or  
119 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

120 (i) (i) except as otherwise provided in this Subsection (2)(i), the amount of a

121 contribution made during the taxable year on behalf of the taxpayer to a medical care savings  
122 account and interest earned on a contribution to a medical care savings account established  
123 pursuant to Title 31A, Chapter 32a, Medical Care Savings Account Act, to the extent the  
124 contribution is accepted by the account administrator as provided in the Medical Care Savings  
125 Account Act, and if the taxpayer did not deduct or include amounts on the taxpayer's federal  
126 individual income tax return pursuant to Section 220, Internal Revenue Code; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

159 and

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

161 (2)(m)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the

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

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

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

166 (B) for purposes of Subsection (2)(m)(i)(C), prescribing the circumstances under which

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

168 corporation; and

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

170 beginning on or after January 1, 2004, ~~[but beginning on or before December 31, 2004,]~~

171 income a resident or nonresident individual receives:

172 (A) for qualifying military service; and

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

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

175 (ii) notwithstanding Subsection (2)(n)(i), a subtraction from federal taxable income is

176 not allowed under Subsection (2)(n)(i) for income included in adjusted gross income on a

177 resident or nonresident individual's federal individual income tax return for that taxable year if

178 that income is received from a source that constitutes a:

179 (A) pension; or

180 (B) survivor benefit; and

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

182 for purposes of Subsections ~~[(1)]~~ (2)(n)(i) and (ii), the commission may by rule define what

183 constitutes income:

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

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

186 (I) pension; or

187 (II) survivor benefit.

188 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted  
189 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or  
190 \$4,800, except that:

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

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

197 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
198 \$25,000, the amount of the retirement income exemption that may be subtracted shall be  
199 reduced by 50 cents.

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

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

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

208 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
209 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

213 (d) For purposes of determining ownership of items of retirement income common law

214 doctrine will be applied in all cases even though some items may have originated from service  
215 or investments in a community property state. Amounts received by the spouse of a living  
216 retiree because of the retiree's having been employed in a community property state are not  
217 deductible as retirement income of such spouse.

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

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

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

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

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

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

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

230 (i) may not:

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

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

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

235 (ii) shall:

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

237 (B) be in writing;

238 (C) be signed by:

239 (I) the governor; and

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

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

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

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



245 in effect.

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

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

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

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

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

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

258 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by  
259 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to  
260 2000 Form 8814 if for purposes of federal individual income taxes the information contained  
261 on 2000 Form 8814 is reported on a form other than Form 8814; and

262 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter  
263 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form  
264 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income  
265 taxes the information contained on 2000 Form 8814 is reported on a form other than Form  
266 8814.

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

269 (i) the lesser of:

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

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

272 (I) the child's taxable interest;

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

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

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

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

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

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

286 (i) the entity; or

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

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

289 **Section 2. Retrospective operation.**

290 This bill has retrospective operation for taxable years beginning on or after January 1,  
291 2005.

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**Legislative Review Note**  
**as of 12-7-04 8:43 AM**

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**

**Interim Committee Note**  
**as of 12-08-04 10:49 AM**

The Revenue and Taxation Interim Committee recommended this bill.

**State Impact**

It is estimated that passage of this bill would decrease the Uniform School Fund by \$4,000,000 annually.

	<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	\$0	(\$4,000,000)	(\$4,000,000)
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$4,000,000)</b>	<b>(\$4,000,000)</b>

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**Individual and Business Impact**

Eligible individuals would be exempt from income tax payments.

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**Office of the Legislative Fiscal Analyst**