

**Senator Howard A. Stephenson** proposes the following substitute bill:

**INDIVIDUAL INCOME TAX SUBTRACTION FOR CERTAIN  
MILITARY INCOME AND TUITION WAIVER FOR  
QUALIFYING MILITARY SERVICE MEMBERS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Howard A. Stephenson**

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**LONG TITLE**

**General Description:**

This bill amends the State System of Higher Education title and the Individual Income Tax Act relating to a tuition waiver for a qualifying military service member and a subtraction for certain military income.

**Highlighted Provisions:**

This bill:

- ▶ provides and amends definitions;
- ▶ provides a tuition waiver for a qualifying military service member;
- ▶ amends a subtraction for certain military income; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This provides an effective date and provides for retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

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



26 **59-10-114**, as last amended by Chapter 2, Laws of Utah 2004, Fourth Special Session

27 ENACTS:

28 **53B-8f-101**, Utah Code Annotated 1953

29 **53B-8f-102**, Utah Code Annotated 1953

30 **53B-8f-103**, Utah Code Annotated 1953

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

33 Section 1. Section **53B-8f-101** is enacted to read:

34 **CHAPTER 8f. QUALIFYING MILITARY SERVICE MEMBER TUITION ACT**

35 **53B-8f-101. Title.**

36 This chapter is known as the "Qualifying Military Service Member Tuition Act."

37 Section 2. Section **53B-8f-102** is enacted to read:

38 **53B-8f-102. Definitions.**

39 As used in this chapter:

40 (1) "Qualifying military service member" means a member of:

41 (a) The Utah Army National Guard;

42 (b) The Utah Air National Guard; or

43 (c) the following if the member is assigned to a unit that is located in the state:

44 (i) The Army Reserve;

45 (ii) The Naval Reserve;

46 (iii) The Air Force Reserve;

47 (iv) The Marine Corps Reserve; or

48 (v) The Coast Guard Reserve.

49 (2) "State institution of higher education" means an institution listed in Section

50 53B-1-102.

51 (3) (a) Subject to Subsection (3)(b), "tuition" means:

52 (i) for a qualifying military service member who is a resident student as determined in

53 accordance with Section 53B-8-102, tuition at the rate for a resident of the state at the

54 institution of higher education that the qualifying military service member attends; or

55 (ii) for a qualifying military service member who is not a resident student as

56 determined in accordance with Section 53B-8-102, tuition at the rate for a nonresident of the

57 state at the institution of higher education that the qualifying military service member attends.

58 (b) "Tuition" does not include a fee.

59 Section 3. Section **53B-8f-103** is enacted to read:

60 **53B-8f-103. Tuition waivers for qualifying military service members.**

61 Beginning in the 2005-06 academic year, a state institution of higher education shall  
62 waive tuition for a qualifying military service member who:

63 (1) is:

64 (a) an undergraduate student;

65 (b) a graduate student;

66 (c) a resident student as determined in accordance with Section 53B-8-102; or

67 (d) not a resident student as determined in accordance with Section 53B-8-102;

68 (2) is admitted as a full-time, part-time, or summer school student in a program of  
69 study leading to a degree or certificate; and

70 (3) provides verification:

71 (a) as required by board policy;

72 (b) that the qualifying military service member is a qualifying military service member;

73 and

74 (c) to the institution of higher education that the qualifying military service member  
75 attends.

76 Section 4. Section **59-10-103** is amended to read:

77 **59-10-103. Definitions.**

78 (1) As used in this chapter:

79 (a) "Adoption expenses" means:

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

82 (ii) any welfare agency fees or costs;

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

84 (iv) any legal fees or costs; or

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

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

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

- 88 (ii) is eligible for services under Title 62A, Chapter 5, Services to People with  
89 Disabilities; and
- 90 (iii) is not enrolled in:
- 91 (A) an education program for students with disabilities that is authorized under Section  
92 53A-15-301; or
- 93 (B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.
- 94 (c) (i) For purposes of Subsection 59-10-114(2)(m), "capital gain transaction" means a  
95 transaction that results in a:
- 96 (A) short-term capital gain; or  
97 (B) long-term capital gain.
- 98 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
99 the commission may by rule define the term "transaction."
- 100 (d) "Commercial domicile" means the principal place from which the trade or business  
101 of a Utah small business corporation is directed or managed.
- 102 (e) "Corporation" includes:
- 103 (i) associations;  
104 (ii) joint stock companies; and  
105 (iii) insurance companies.
- 106 (f) "Dependent child with a disability" means an individual 21 years of age or younger  
107 who:
- 108 (i) (A) is diagnosed by a school district representative under rules adopted by the State  
109 Board of Education as having a disability classified as:
- 110 (I) autism;  
111 (II) deafness;  
112 (III) preschool developmental delay;  
113 (IV) dual sensory impairment;  
114 (V) hearing impairment;  
115 (VI) intellectual disability;  
116 (VII) multidisability;  
117 (VIII) orthopedic impairment;  
118 (IX) other health impairment;

- 119 (X) traumatic brain injury; or
- 120 (XI) visual impairment;
- 121 (B) is not receiving residential services from:
  - 122 (I) the Division of Services for People with Disabilities created under Section
  - 123 62A-5-102; or
  - 124 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
  - 125 and
  - 126 (C) is enrolled in:
    - 127 (I) an education program for students with disabilities that is authorized under Section
    - 128 53A-15-301; or
    - 129 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
    - 130 or
    - 131 (ii) is identified under guidelines of the Department of Health as qualified for:
      - 132 (A) Early Intervention; or
      - 133 (B) Infant Development Services.
    - 134 (g) "Employee" is as defined in Section 59-10-401.
    - 135 (h) "Employer" is as defined in Section 59-10-401.
    - 136 (i) "Fiduciary" means:
      - 137 (i) a guardian;
      - 138 (ii) a trustee;
      - 139 (iii) an executor;
      - 140 (iv) an administrator;
      - 141 (v) a receiver;
      - 142 (vi) a conservator; or
      - 143 (vii) any person acting in any fiduciary capacity for any individual.
    - 144 (j) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
    - 145 homesteaded land that was held to have been diminished from the Uintah and Ouray
    - 146 Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).
    - 147 (k) "Individual" means a natural person and includes aliens and minors.
    - 148 (l) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all
    - 149 or part of the trust without the consent of a person who has a substantial beneficial interest in

150 the trust and the interest would be adversely affected by the exercise of the settlor's power to  
151 revoke or terminate all or part of the trust.

152 (m) For purposes of Subsection 59-10-114(2)(m), "long-term capital gain" is as defined  
153 in Section 1222, Internal Revenue Code.

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

155 (o) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a  
156 resident estate or trust.

157 (p) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other  
158 unincorporated organization:

159 (A) through or by means of which any business, financial operation, or venture is  
160 carried on; and

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

162 (I) a trust;

163 (II) an estate; or

164 (III) a corporation.

165 (ii) "Partnership" does not include any organization not included under the definition of  
166 "partnership" in Section 761, Internal Revenue Code.

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

169 (q) "Qualifying military service member" means~~[(i) in the case of]~~ a member of:

170 (i) The Utah Army National Guard;

171 (ii) The Utah Air National Guard; or

172 (iii) the following if the member is assigned to a unit that is located in the state:

173 (A) The Army Reserve[;];

174 (B) The Naval Reserve[;];

175 (C) The Air Force Reserve[;];

176 (D) The Marine Corps Reserve[;]; or

177 (E) The Coast Guard Reserve[~~active duty in accordance with an order received~~  
178 under:];

179 ~~[(A) 10 U.S.C. Sec. 12301;]~~

180 ~~[(B) 10 U.S.C. Sec. 12302;]~~

181 ~~[(C) 10 U.S.C. Sec. 12303; or]~~  
182 ~~[(D) 10 U.S.C. Sec. 12304; or]~~  
183 ~~[(ii) in the case of a member of The Army National Guard of the United States or The~~  
184 ~~Air National Guard of the United States:]~~  
185 ~~[(A) active duty in accordance with an order received under:]~~  
186 ~~[(F) 10 U.S.C. Sec. 12301;]~~  
187 ~~[(H) 10 U.S.C. Sec. 12302;]~~  
188 ~~[(III) 10 U.S.C. Sec. 12303; or]~~  
189 ~~[(IV) 10 U.S.C. Sec. 12304; or]~~  
190 ~~[(B) service under a call to active service:]~~  
191 ~~[(F) authorized by the:]~~  
192 ~~[(Aa) President of the United States; or]~~  
193 ~~[(Bb) Secretary of Defense of the United States;]~~  
194 ~~[(H) for a period of more than 30 consecutive days;]~~  
195 ~~[(III) in accordance with an order received under 32 U.S.C. Sec. 502(f); and]~~  
196 ~~[(IV) for purposes of responding to a national emergency:]~~  
197 ~~[(Aa) declared by the President of the United States; and]~~  
198 ~~[(Bb) supported by federal funds.]~~  
199 (r) "Qualifying stock" means stock that is:  
200 (i) (A) common; or  
201 (B) preferred;  
202 (ii) as defined by the commission by rule, originally issued to:  
203 (A) a resident or nonresident individual; or  
204 (B) a partnership if the resident or nonresident individual making a subtraction from  
205 federal taxable income in accordance with Subsection 59-10-114(2)(m):  
206 (I) was a partner when the stock was issued; and  
207 (II) remains a partner until the last day of the taxable year for which the resident or  
208 nonresident individual makes the subtraction from federal taxable income in accordance with  
209 Subsection 59-10-114(2)(m); and  
210 (iii) issued:  
211 (A) by a Utah small business corporation;

- 212 (B) on or after January 1, 2003; and
- 213 (C) for:
- 214 (I) money; or
- 215 (II) other property, except for stock or securities.
- 216 (s) (i) "Resident individual" means:
- 217 (A) an individual who is domiciled in this state for any period of time during the
- 218 taxable year, but only for the duration of the period during which the individual is domiciled in
- 219 this state; or
- 220 (B) an individual who is not domiciled in this state but:
- 221 (I) maintains a permanent place of abode in this state; and
- 222 (II) spends in the aggregate 183 or more days of the taxable year in this state.
- 223 (ii) For purposes of Subsection (1)(s)(i)(B), a fraction of a calendar day shall be
- 224 counted as a whole day.
- 225 (t) "Resident estate" or "resident trust" is as defined in Section 75-7-103.
- 226 (u) For purposes of Subsection 59-10-114(2)(m), "short-term capital gain" is as defined
- 227 in Section 1222, Internal Revenue Code.
- 228 (v) "Taxable income" and "state taxable income" are defined as provided in Sections
- 229 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.
- 230 (w) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or
- 231 trust, whose income is subject in whole or part to the tax imposed by this chapter.
- 232 (x) "Uintah and Ouray Reservation" means the lands recognized as being included
- 233 within the Uintah and Ouray Reservation in:
- 234 (i) Hagen v. Utah, 510 U.S. 399 (1994); and
- 235 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).
- 236 (y) (i) "Utah small business corporation" means a corporation that:
- 237 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue
- 238 Code;
- 239 (B) except as provided in Subsection (1)(y)(ii), meets the requirements of Section
- 240 1244(c)(1)(C), Internal Revenue Code; and
- 241 (C) has its commercial domicile in this state.
- 242 (ii) Notwithstanding Subsection (1)(y)(i)(B), the time period described in Section

243 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a  
244 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the  
245 resident or nonresident individual makes a subtraction from federal taxable income in  
246 accordance with Subsection 59-10-114(2)(m).

247 (z) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian  
248 Tribe of the Uintah and Ouray Reservation.

249 (aa) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

250 (bb) "Wages" is as defined in Section 59-10-401.

251 (2) (a) Any term used in this chapter has the same meaning as when used in  
252 comparable context in the laws of the United States relating to federal income taxes unless a  
253 different meaning is clearly required.

254 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall  
255 mean the Internal Revenue Code or other provisions of the laws of the United States relating to  
256 federal income taxes that are in effect for the taxable year.

257 (c) Any reference to a specific section of the Internal Revenue Code or other provision  
258 of the laws of the United States relating to federal income taxes shall include any  
259 corresponding or comparable provisions of the Internal Revenue Code as hereafter amended,  
260 redesignated, or reenacted.

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

262 **59-10-114. Additions to and subtractions from federal taxable income of an**  
263 **individual.**

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

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

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

273 (c) for taxable years beginning on or after January 1, 2002, the amount of a child's

274 income calculated under Subsection (5) that:

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

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

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

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

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

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

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

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

292 (i) a state other than this state;

293 (ii) the District of Columbia;

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

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

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

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

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

305 (a) the interest or dividends on obligations or securities of the United States and its  
306 possessions or of any authority, commission, or instrumentality of the United States, to the  
307 extent includable in gross income for federal income tax purposes but exempt from state  
308 income taxes under the laws of the United States, but the amount subtracted under this  
309 Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to  
310 purchase or carry the obligations or securities described in this Subsection (2)(a), and by any  
311 expenses incurred in the production of interest or dividend income described in this Subsection  
312 (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in  
313 determining federal taxable income;

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

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

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

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

327 (A) paid; or

328 (B) incurred;

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

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

332 (d) amounts received by taxpayers under age 65 as retirement income which, for  
333 purposes of this section, means pensions and annuities, paid from an annuity contract  
334 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),  
335 Internal Revenue Code, or purchased by an employee under a plan which meets the

336 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or  
337 political subdivision thereof, or the District of Columbia, to the employee involved or the  
338 surviving spouse;

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

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

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

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

350 (i) for:

351 (A) the taxpayer;

352 (B) the taxpayer's spouse; and

353 (C) the taxpayer's dependents; and

354 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or  
355 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

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

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

365 (A) the maximum contribution allowed under the Medical Care Savings Account Act  
366 for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is

367 covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that  
368 covers the other spouse, and each spouse has a medical care savings account; or

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

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

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

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

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

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

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

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

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

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

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

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

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

395 and

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

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

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

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

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

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

405 (n) ~~[(i) except as provided in Subsection (2)(n)(ii);]~~ for ~~[the]~~ taxable ~~[year]~~ years  
406 beginning on or after January 1, ~~[2004, but beginning on or before December 31, 2004;]~~ 2005,  
407 the first \$2,200 of income a [resident or nonresident individual] qualifying military service  
408 member receives:

409 ~~[(A)]~~ (i) for ~~[qualifying military] service[; and];~~

410 (A) as a qualifying military service member; or

411 (B) under an order into active service in accordance with Section 39-1-5; and

412 ~~[(B)]~~ (ii) to the extent that income is included in adjusted gross income on that resident  
413 or nonresident individual's federal individual income tax return for that taxable year[;].

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

418 ~~[(A) pension; or]~~

419 ~~[(B) survivor benefit; and]~~

420 ~~[(iii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~  
421 ~~for purposes of Subsections (1) (2)(n)(i) and (ii), the commission may by rule define what~~  
422 ~~constitutes income:]~~

423 ~~[(A) a resident or nonresident individual receives for qualifying military service; or]~~

424 ~~[(B) received from a source that constitutes a:]~~

425 ~~[(F) pension; or]~~

426 ~~[(H) survivor benefit:]~~

427 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted  
428 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or

429 \$4,800, except that:

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

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

436 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
437 \$25,000, the amount of the retirement income exemption that may be subtracted shall be  
438 reduced by 50 cents.

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

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

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

447 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
448 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

459 (i) for an amount that is reimbursed or funded in whole or in part by the federal

460 government, the state, or an agency or instrumentality of the federal government or the state;  
461 and

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

464 (4) (a) A subtraction for an amount described in Subsection (2)(1) is allowed only if:

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

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

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

469 (i) may not:

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

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

472 subtraction described in Subsection (2)(1); or

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

474 (ii) shall:

475 (A) provide for the implementation of the subtraction described in Subsection (2)(1);

476 (B) be in writing;

477 (C) be signed by:

478 (I) the governor; and

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

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

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

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

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

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

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

491 Ouray Reservation; and

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

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

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

497 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by  
498 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to  
499 2000 Form 8814 if for purposes of federal individual income taxes the information contained  
500 on 2000 Form 8814 is reported on a form other than Form 8814; and

501 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter  
502 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form  
503 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income  
504 taxes the information contained on 2000 Form 8814 is reported on a form other than Form  
505 8814.

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

508 (i) the lesser of:

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

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

511 (I) the child's taxable interest;

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

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

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

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

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

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

- 525 (i) the entity; or
- 526 (ii) (A) the state in which the entity is located; or
- 527 (B) the District of Columbia, if the entity is located within the District of Columbia.

528 **Section 6. Effective date -- Retrospective operation.**

529 (1) The enactment of the following sections take effect on July 1, 2005:

- 530 (a) Section 53B-8f-101;
- 531 (b) Section 53B-8f-102; and
- 532 (c) Section 53B-8f-103.

533 (2) The amendments to Sections 59-10-103 and 59-10-114 have retrospective  
534 operation for taxable years beginning on or after January 1, 2005.

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**Fiscal Note**

Bill Number SB0013s01

**Individual Income Tax Subtraction for Certain Military  
Income Tuition Waiver for Qualifying Military Service**

21-Feb-05

11:30 AM

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**State Impact**

Passage of this bill could decrease the Uniform School Fund by \$1,100,000 annually. There is also a tuition waiver program identified in the bill which is estimated to result in \$3,900,000 tuition savings. It is expected that tuition waived would be reimbursed to the state system of higher education.

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2006</u>	<u>FY 2007</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>
Uniform School Fund	\$3,900,000	\$3,900,000	(\$1,100,000)	(\$1,100,000)
<b>TOTAL</b>	<b>\$3,900,000</b>	<b>\$3,900,000</b>	<b>(\$1,100,000)</b>	<b>(\$1,100,000)</b>

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**Individual and Business Impact**

Eligible individuals would receive an income tax deduction and potential tuition waivers.

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**Office of the Legislative Fiscal Analyst**