

INDIVIDUAL INCOME TAX AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patricia W. Jones

Senate Sponsor: _____

Cosponsor: Steven R. Mascaro

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 purpose 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; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None



Other Special Clauses:

This bill takes effect for taxable years beginning on or after January 1, 2007.

Utah Code Sections Affected:**AMENDS:**

53B-8a-106, as last amended by Chapter 109, Laws of Utah 2005

59-10-103, as last amended by Chapter 241, Laws of Utah 2005

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

59-10-114, as last amended by Chapters 109 and 241, Laws of Utah 2005

59-10-201, as last amended by Chapter 109, Laws of Utah 2005

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

ENACTS:

59-10-136, Utah Code Annotated 1953

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

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

53B-8a-106. Account agreements.

The trust may enter into account agreements with account owners on behalf of beneficiaries under the following terms and agreements:

(1) (a) An account agreement may require an account owner to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary, not to exceed an amount determined by the program administrator.

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

(c) An account owner may make additional optional payments as long as the total payments for a specific beneficiary do not exceed the total estimated higher education costs as determined by the program administrator.

(d) The maximum amount of investments that may be subtracted from federal taxable income of a resident or nonresident individual under Subsection 59-10-114(2)(~~f~~)(i) shall be \$1,510 for each individual beneficiary for the 2005 calendar year and an amount adjusted annually thereafter to reflect increases in the Consumer Price Index.

(2) (a) (i) Beneficiaries designated in account agreements must be designated after

59 birth and before age 19 for the participant to subtract allowable investments from federal
60 taxable income under Subsection 59-10-114(2)(~~g~~)(i).

61 (ii) If the beneficiary is designated after birth and before age 19, the payment of
62 benefits provided under the account agreement must begin not later than the beneficiary's 27th
63 birthday.

64 (b) (i) Account owners may designate beneficiaries age 19 or older, but investments for
65 those beneficiaries are not eligible for subtraction from federal taxable income.

66 (ii) If a beneficiary age 19 or older is designated, the payment of benefits provided
67 under the account agreement must begin not later than ten years from the account agreement
68 date.

69 (3) Each account agreement shall state clearly that there are no guarantees regarding
70 moneys in the trust as to the return of principal and that losses could occur.

71 (4) Each account agreement shall provide that:

72 (a) no contributor to, or designated beneficiary under, an account agreement may direct
73 the investment of any contributions or earnings on contributions;

74 (b) no part of the money in any account may be used as security for a loan; and

75 (c) no account owner may borrow from the trust.

76 (5) The execution of an account agreement by the trust may not guarantee in any way
77 that higher education costs will be equal to projections and estimates provided by the trust or
78 that the beneficiary named in any participation agreement will:

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

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

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

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

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

89 (7) Account agreements may be freely amended throughout their terms in order to

enable account owners to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule.

(8) Each account agreement shall provide that:

(a) the account agreement may be canceled upon the terms and conditions, and upon payment of the fees and costs set forth and contained in the board's rules and regulations; and

(b) the program administrator may amend the agreement unilaterally and retroactively, if necessary, to maintain the trust as a qualified tuition program under Section 529 Internal Revenue Code.

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

59-10-103. Definitions.

(1) As used in this chapter:

(a) "Adoption expenses" means:

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

(ii) any welfare agency fees or costs;

(iii) any child placement service fees or costs;

(iv) any legal fees or costs; or

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

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

(i) is 18 years of age or older;

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

(iii) is not enrolled in:

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

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

(c) (i) For purposes of Subsection 59-10-114(2)~~[(m)]~~(1), "capital gain transaction" means a transaction that results in a:

(A) short-term capital gain; or

(B) long-term capital gain.

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

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

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

(e) "Corporation" includes:

(i) associations;

(ii) joint stock companies; and

(iii) insurance companies.

(f) "Dependent child with a disability" means an individual 21 years of age or younger who:

(i) (A) is diagnosed by a school district representative under rules adopted by the State Board of Education as having a disability classified as:

(I) autism;

(II) deafness;

(III) preschool developmental delay;

(IV) dual sensory impairment;

(V) hearing impairment;

(VI) intellectual disability;

(VII) multidisability;

(VIII) orthopedic impairment;

(IX) other health impairment;

(X) traumatic brain injury; or

(XI) visual impairment;

(B) is not receiving residential services from:

(I) the Division of Services for People with Disabilities created under Section 62A-5-102; or

(II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

and

(C) is enrolled in:

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

(II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

or

(ii) is identified under guidelines of the Department of Health as qualified for:

(A) Early Intervention; or

(B) Infant Development Services.

(g) "Employee" is as defined in Section 59-10-401.

(h) "Employer" is as defined in Section 59-10-401.

(i) "Fiduciary" means:

(i) a guardian;

(ii) a trustee;

(iii) an executor;

(iv) an administrator;

(v) a receiver;

(vi) a conservator; or

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

(j) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).

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

(l) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke or terminate all or part of the trust.

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

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

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

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

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

183 (B) which is not, within the meaning of this chapter:
184 (I) a trust;
185 (II) an estate; or
186 (III) a corporation.
187 (ii) "Partnership" does not include any organization not included under the definition of
188 "partnership" in Section 761, Internal Revenue Code.
189 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
190 organization described in Subsection (1)(p)(i).
191 (q) "Qualifying military service member" means a member of:
192 (i) The Utah Army National Guard;
193 (ii) The Utah Air National Guard; or
194 (iii) the following if the member is assigned to a unit that is located in the state:
195 (A) The Army Reserve;
196 (B) The Naval Reserve;
197 (C) The Air Force Reserve;
198 (D) The Marine Corps Reserve; or
199 (E) The Coast Guard Reserve.
200 (r) "Qualifying stock" means stock that is:
201 (i) (A) common; or
202 (B) preferred;
203 (ii) as defined by the commission by rule, originally issued to:
204 (A) a resident or nonresident individual; or
205 (B) a partnership if the resident or nonresident individual making a subtraction from
206 federal taxable income in accordance with Subsection 59-10-114(2)~~[(m)]~~(l):
207 (I) was a partner when the stock was issued; and
208 (II) remains a partner until the last day of the taxable year for which the resident or
209 nonresident individual makes the subtraction from federal taxable income in accordance with
210 Subsection 59-10-114(2)~~[(m)]~~(l); and
211 (iii) issued:
212 (A) by a Utah small business corporation;
213 (B) on or after January 1, 2003; and

(C) for:

(I) money; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

(y) (i) "Utah small business corporation" means a corporation that:

(A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue Code;

(B) except as provided in Subsection (1)(y)(ii), meets the requirements of Section 1244(c)(1)(C), Internal Revenue Code; and

(C) has its commercial domicile in this state.

(ii) Notwithstanding Subsection (1)(y)(i)(B), the time period described in Section 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a

corporation's aggregate gross receipts shall end on the last day of the taxable year for which the resident or nonresident individual makes a subtraction from federal taxable income in accordance with Subsection 59-10-114(2)(~~m~~)(1).

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

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

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

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

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

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

Section 3. Section **59-10-104** is amended to read:

59-10-104. Tax basis -- Rates -- Exemption.

(1) Except as provided in Subsection ~~(4)~~ (5), for taxable years beginning on or after January 1, ~~[2001]~~ 2007, a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual as provided in this section.

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

If the state taxable income is:

Less than or equal to ~~[\$863]~~ \$2,460

Greater than ~~[\$863]~~ \$2,460 but less than

or equal to ~~[\$1,726]~~ \$4,930

Greater than ~~[\$1,726]~~ \$4,930 but less than

or equal to ~~[\$2,588]~~ \$7,390

The tax is:

2.3% of the state taxable income

~~[\$20]~~ \$57, plus 3.3% of state taxable

income greater than ~~[\$863]~~ \$2,460

~~[\$48]~~ \$138, plus 4.2% of state taxable

income greater than ~~[\$1,726]~~ 4,930

276	Greater than [\$2,588] <u>\$7,390</u> but less than	[\$85] <u>\$241</u> , plus 5.2% of state taxable
277	or equal to [\$3,450] <u>\$9,850</u>	income greater than [\$2,588] <u>\$7,390</u>
278	Greater than [\$3,450] <u>\$9,850</u> but less than	[\$129] <u>\$369</u> , plus 6% of state taxable
279	or equal to [\$4,313] <u>\$12,320</u>	income greater than [\$3,450] <u>\$9,850</u>
280	Greater than [\$4,313] <u>\$12,320</u>	[\$181] <u>\$518</u> , plus 7% of state taxable
281		income greater than [\$4,313] <u>\$12,320</u>

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

285	If the state taxable income is:	The tax is:
286	Less than or equal to [\$1,726] <u>\$4,930</u>	2.3% of the state taxable income
287	Greater than [\$1,726] <u>\$4,930</u> but less than	[\$40] <u>\$113</u> , plus 3.3% of state taxable
288	or equal to [\$3,450] <u>\$9,850</u>	income greater than [\$1,726] <u>\$4,930</u>
289	Greater than [\$3,450] <u>\$9,850</u> but less than	[\$97] <u>\$276</u> , plus 4.2% of state taxable
290	or equal to [\$5,176] <u>\$14,780</u>	income greater than [\$3,450] <u>\$9,850</u>
291	Greater than [\$5,176] <u>\$14,780</u> but less than	[\$169] <u>\$483</u> , plus 5.2% of state taxable
292	or equal to [\$6,900] <u>\$19,710</u>	income greater than [\$5,176] <u>\$14,780</u>
293	Greater than [\$6,900] <u>\$19,710</u> but less than	[\$259] <u>\$739</u> , plus 6% of state taxable
294	or equal to [\$8,626] <u>\$24,640</u>	income greater than [\$6,900] <u>\$19,710</u>
295	Greater than [\$8,626] <u>\$24,640</u>	[\$362] <u>\$1,035</u> , plus 7% of state taxable
296		income greater than [\$8,626] <u>\$24,640</u>

297 (4) (a) For taxable years beginning on or after January 1, 2008, the commission shall:

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

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

300 equal to the percentage difference between the consumer price index for the preceding calendar
 301 year and the consumer price index for the calendar year 2006; and

302 (B) after making an increase or decrease under Subsection (4)(a)(i)(A), round the
 303 income brackets under Subsection (2) to the nearest \$10;

304 (ii) after making the adjustments described in Subsection (4)(a)(i) to the income
 305 brackets under Subsection (2), adjust the income brackets under Subsection (3) such that for
 306 each income bracket under Subsection (2) there is a corresponding income bracket under

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

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

(B) two; and

(iii) to the extent necessary to reflect an adjustment under Subsection (4)(a)(i) or (ii).
increase or decrease the amount of tax under Subsection (2) or (3) prior to adding in the portion
of the tax calculated as a percentage of state taxable income.

(b) The commission may not increase or decrease the tax rate percentages provided in
Subsection (2) or (3).

(c) For purposes of Subsection (4)(a)(i), the commission shall calculate the consumer
price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

~~[(4)]~~ (5) This section does not apply to a resident individual exempt from taxation
under Section 59-10-104.1.

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

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

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

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

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

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

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

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

~~[(d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue~~

Code;]

(d) for taxable years beginning on or after January 1, 2007, the amounts calculated under Subsection (7);

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

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

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

(f) the amount disbursed to an account owner under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the year in which the amount is disbursed;

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

(i) a state other than this state;

(ii) the District of Columbia;

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

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

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

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

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

(a) the interest or dividends on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States, but the amount subtracted under this

Subsection (2)(a) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2)(a) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

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

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

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

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

(A) paid; or

(B) incurred;

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

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

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

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

personal retirement exemption;

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

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

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

(i) for:

(A) the taxpayer;

(B) the taxpayer's spouse; and

(C) the taxpayer's dependents; and

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

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

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

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

(B) the maximum contribution allowed under the Medical Care Savings Account Act

for the tax year for taxpayers:

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

466 [~~(m)~~] (m) for the taxable year beginning on or after January 1, 2005, but beginning on or
467 before December 31, 2005, the first \$2,200 of income a qualifying military service member
468 receives:

469 (i) for service:

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

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

472 (ii) to the extent that income is included in adjusted gross income on that resident or
473 nonresident individual's federal individual income tax return for that taxable year.

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

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

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

483 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
484 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
485 reduced by 50 cents.

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

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

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

cents; and

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

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

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

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

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

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

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

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

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

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

(i) may not:

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

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

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

(ii) shall:

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

524 (2)(~~(f)~~)(k);
525 (B) be in writing;
526 (C) be signed by:
527 (I) the governor; and
528 (II) the chair of the Business Committee of the Ute tribe;
529 (D) be conditioned on obtaining any approval required by federal law; and
530 (E) state the effective date of the agreement.
531 (c) (i) The governor shall report to the commission by no later than February 1 of each
532 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
533 in effect.
534 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
535 subtraction permitted under Subsection (2)(~~(f)~~)(k) is not allowed for taxable years beginning on
536 or after the January 1 following the termination of the agreement.
537 (d) For purposes of Subsection (2)(~~(f)~~)(k) and in accordance with Title 63, Chapter 46a,
538 Utah Administrative Rulemaking Act, the commission may make rules:
539 (i) for determining whether income is derived from a source within the Uintah and
540 Ouray Reservation; and
541 (ii) that are substantially similar to how federal adjusted gross income derived from
542 Utah sources is determined under Section 59-10-117.
543 (5) (a) For purposes of this Subsection (5), "Form 8814" means:
544 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
545 Interest and Dividends; or
546 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
547 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
548 2000 Form 8814 if for purposes of federal individual income taxes the information contained
549 on 2000 Form 8814 is reported on a form other than Form 8814; and
550 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
551 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
552 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
553 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
554 8814.

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

(i) the lesser of:

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

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

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

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

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

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

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

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

(i) the entity; or

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

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

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

(i) "Disabled person" means:

(A) a dependent child with a disability; or

(B) an adult with a disability.

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

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

(B) for:

(I) an individual;

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

586 (III) if the individual has one or more dependents, the individual's dependents.

587 (iii) "Personal exemption amount" means an amount calculated by dividing the
588 personal exemption value by the personal exemptions claimed.

589 (iv) "Personal exemptions claimed" means the total number of personal exemptions a
590 resident or nonresident individual claims:

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

592 (B) for the same taxable year as the taxable year for which the resident or nonresident
593 individual is filing a tax return under this chapter.

594 (v) "Personal exemptions claimed for disabled persons" means the total number of
595 personal exemptions a resident or nonresident individual claims:

596 (A) for:

597 (I) if the individual is a disabled person, the individual;

598 (II) if the individual's spouse is a disabled person, the individual's spouse; and

599 (III) if one or more of the individual's dependents is a disabled person, the number of
600 dependents that are disabled persons;

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

602 (C) for the same taxable year as the taxable year for which the resident or nonresident
603 individual is filing a tax return under this chapter.

604 (vi) "Personal exemptions remaining" means the number of personal exemptions by
605 which the personal exemptions claimed exceeds the personal exemptions claimed for disabled
606 persons.

607 (vii) "Personal exemption value" means the total dollar amount a resident or
608 nonresident individual is allowed for the personal exemptions claimed:

609 (A) on the resident or nonresident individual's federal individual income tax return for
610 the same taxable year as the taxable year for which the resident or nonresident individual is
611 filing a tax return under this chapter; and

612 (B) under Section 151, Internal Revenue Code.

613 (b) For purposes of Subsection (1)(d), a resident or nonresident individual shall add the
614 following amounts to the resident or nonresident individual's federal taxable income for a
615 taxable year:

616 (i) the product of:

617 (A) the personal exemptions claimed for disabled persons;
618 (B) the personal exemption amount; and
619 (C) .25; and
620 (ii) for any personal exemptions remaining, the sum of:
621 (A) for the first personal exemption remaining, the product of:
622 (I) the personal exemption amount; and
623 (II) .25;
624 (B) for the second personal exemption remaining, the product of:
625 (I) the personal exemption amount; and
626 (II) .25;
627 (C) for the third personal exemption remaining, the product of:
628 (I) the personal exemption amount; and
629 (II) .50;
630 (D) for the fourth personal exemption remaining, the product of:
631 (I) the personal exemption amount; and
632 (II) .75;
633 (E) for the fifth personal exemption remaining, the product of:
634 (I) the personal exemption amount; and
635 (II) .75; and
636 (F) for any personal exemptions that exceed the fifth personal exemption remaining,
637 the product of:
638 (I) the number of personal exemptions that exceed the fifth personal exemption
639 remaining; and
640 (II) the personal exemption amount.
641 Section 5. Section **59-10-136** is enacted to read:
642 **59-10-136. Nonrefundable earned income tax credit.**
643 (1) For taxable years beginning on or after January 1, 2007, a taxpayer may claim as
644 provided in this section a nonrefundable earned income tax credit equal to 5% of the amount
645 the taxpayer is allowed as a federal earned income tax credit in accordance with Section 32,
646 Internal Revenue Code, for the taxable year.
647 (2) A taxpayer may not carry forward or carry back any earned income tax credit

648 allowed under this section.

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

650 **59-10-201. Taxation of resident trusts and estates.**

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

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

657 (3) The property of the trust established in Title 53B, Chapter 8a, Higher Education
658 Savings Incentive Program, and its income from operations and investments are exempt from
659 all taxation by the state under this chapter.

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

661 **59-10-205. Tax on income derived from Utah sources.**

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

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

668 Section 8. **Effective date.**

669 This bill takes effect for taxable years beginning on or after January 1, 2007.

Legislative Review Note
as of 1-18-06 11:08 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

Fiscal Note
Bill Number HB0302

Individual Income Tax Amendments

24-Jan-06
7:55 AM

State Impact

Passage of this bill would be revenue neutral.

Individual and Business Impact

There is a potential shift in tax burden among taxpayers.

Office of the Legislative Fiscal Analyst