

1 **INCOME TAX ADDITIONS AND**
2 **SUBTRACTIONS FOR HIGHER EDUCATION**
3 **SAVINGS**

4 2007 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Fred R. Hunsaker**

7 Senate Sponsor: _____

8 Cosponsor: Sheryl L. Allen

9

LONG TITLE

10 **General Description:**

11 This bill amends the Individual Income Tax Act relating to additions to and
12 subtractions from federal taxable income for higher education savings.

13 **Highlighted Provisions:**

14 This bill:

- 15
- 16 ▶ provides and modifies definitions;
 - 17 ▶ provides that a resident or nonresident estate or trust may subtract certain qualified
18 investments in the Utah Educational Savings Plan Trust from federal taxable
19 income;
 - 20 ▶ addresses the maximum amount of a qualified investment in the Utah Educational
21 Savings Plan Trust that a resident or nonresident individual or a resident or
22 nonresident estate or trust may subtract from federal taxable income;
 - 23 ▶ modifies and clarifies the amount of a qualified investment in the Utah Educational
24 Savings Plan Trust that a resident or nonresident individual may subtract from
25 federal taxable income; and
 - 26 ▶ makes technical changes.



27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill has retrospective operation for taxable years beginning on or after January 1,
31 2007.

32 **Utah Code Sections Affected:**

33 AMENDS:

- 34 **53B-8a-102**, as last amended by Chapter 109, Laws of Utah 2005
- 35 **53B-8a-103**, as last amended by Chapter 109, Laws of Utah 2005
- 36 **53B-8a-104**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 37 **53B-8a-105**, as last amended by Chapter 109, Laws of Utah 2005
- 38 **53B-8a-106**, as last amended by Chapter 223, Laws of Utah 2006
- 39 **53B-8a-107**, as last amended by Chapter 109, Laws of Utah 2005
- 40 **53B-8a-108**, as last amended by Chapter 109, Laws of Utah 2005
- 41 **53B-8a-109**, as last amended by Chapter 109, Laws of Utah 2005
- 42 **53B-8a-111**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 43 **53B-8a-112**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 44 **53B-8a-113**, as last amended by Chapter 109, Laws of Utah 2005
- 45 **59-10-114**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session
- 46 **59-10-202**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session



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

49 Section 1. Section **53B-8a-102** is amended to read:

50 **53B-8a-102. Definitions.**

51 As used in this chapter:

52 (1) "Account agreement" means an agreement between an account owner and the Utah
53 Educational Savings Plan Trust entered into under this chapter.

54 (2) "Account owner" means [~~an individual, firm, corporation, or its legal representative~~
55 ~~or legal successor, who~~] a person, estate, or trust, if that person, estate, or trust has entered into
56 an account agreement under this chapter for the advance payment of higher education costs on
57 behalf of a beneficiary.

58 (3) "Administrative fund" means the moneys used to administer the Utah Educational
59 Savings Plan Trust.

60 (4) "Beneficiary" means the individual designated in an account agreement to benefit
61 from payments for higher education costs at an institution of higher education.

62 (5) "Benefits" means the payment of higher education costs on behalf of a beneficiary
63 by the Utah Educational Savings Plan Trust during the beneficiary's attendance at an institution
64 of higher education.

65 (6) "Board" means the board of directors of the Utah Educational Savings Plan Trust
66 which is the state Board of Regents acting in its capacity as the Utah Higher Education
67 Assistance Authority under Title 53B, Chapter 12.

68 (7) "Endowment fund" means the endowment fund established under Section
69 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan Trust.

70 (8) "Higher education costs" means the certified costs of tuition, fees, room and board,
71 books, supplies, and equipment required for the enrollment or attendance of a designated
72 beneficiary at an institution of higher education.

73 (9) "Institution of higher education" means a qualified proprietary school approved by
74 the board, a two-year or four-year public or regionally accredited private nonprofit college or
75 university or a Utah college of applied technology, with regard to students enrolled in
76 postsecondary training or education programs.

77 (10) "Program administrator" means the administrator of the Utah Educational Savings
78 Plan Trust appointed by the board to administer and manage the Utah Educational Savings Plan
79 Trust.

80 (11) "Program fund" means the program fund created under Section 53B-8a-107,
81 which is held as a separate fund within the Utah Educational Savings Plan Trust.

82 (12) "Qualified investment" means an amount invested in accordance with an account
83 agreement established under this chapter.

84 [~~(12)~~] (13) "Tuition and fees" means the quarterly or semester charges imposed to
85 attend an institution of higher education and required as a condition of enrollment.

86 [~~(13)~~] (14) "Utah Educational Savings Plan Trust" [~~or "trust"~~] means the Utah
87 Educational Savings Plan Trust created under Section 53B-8a-103.

88 [~~(14)~~] (15) "Vested account" means an account agreement which has been in full force

89 and effect during eight continuous years of residency of the beneficiary in the state while
90 participating in the Utah Educational Savings Plan Trust.

91 Section 2. Section **53B-8a-103** is amended to read:

92 **53B-8a-103. Creation of Utah Educational Savings Plan Trust.**

93 (1) There is created the Utah Educational Savings Plan Trust.

94 (2) The board is the trustee of the Utah Educational Savings Plan Trust.

95 (3) The board, in the capacity of trustee, may:

96 (a) exercise any authority granted by law to the Board of Regents;

97 (b) make and enter into contracts necessary for the administration of the Utah
98 Educational Savings Plan Trust created under this chapter;

99 (c) adopt a corporate seal and change and amend it from time to time;

100 (d) invest moneys within the program fund:

101 (i) (A) in any investments that are determined by the board to be appropriate and are
102 approved by the state treasurer; or

103 (B) in mutual funds registered under the Investment Company Act of 1940, consistent
104 with the best interests of a designated beneficiary's higher education funding needs; and

105 (ii) are in compliance with rules of the State Money Management Council applicable to
106 gift funds;

107 (e) invest moneys within the endowment fund in any investments that are:

108 (i) determined by the board to be appropriate;

109 (ii) approved by the state treasurer; and

110 (iii) in compliance with rules of the State Money Management Council applicable to
111 gift funds;

112 (f) enter into agreements with any institution of higher education, any federal or state
113 agency, or other entity as required to implement this chapter;

114 (g) accept any grants, gifts, legislative appropriations, and other moneys from the state,
115 any unit of federal, state, or local government, or any other person, firm, partnership, or
116 corporation for deposit to the administrative fund, endowment fund, or the program fund;

117 (h) enter into account agreements with account owners;

118 (i) make payments to institutions of higher education pursuant to account agreements
119 on behalf of beneficiaries;

120 (j) make refunds to account owners upon the termination of account agreements
121 pursuant to the provisions of this chapter;

122 (k) appoint a program administrator and determine the duties of the program
123 administrator and other staff as necessary and fix their compensation;

124 (l) make provision for the payment of costs of administration and operation of the Utah
125 Educational Savings Plan Trust; and

126 (m) carry out the duties and obligations of the Utah Educational Savings Plan Trust
127 pursuant to this chapter.

128 Section 3. Section **53B-8a-104** is amended to read:

129 **53B-8a-104. Office facilities, clerical, and administrative support for the Utah**
130 **Educational Savings Plan Trust.**

131 (1) The board shall provide to the Utah Educational Savings Plan Trust, by agreement,
132 administrative and clerical support and office facilities and space.

133 (2) Reasonable charges or fees may be levied against the Utah Educational Savings
134 Plan Trust pursuant to the agreement for the services provided by the board.

135 Section 4. Section **53B-8a-105** is amended to read:

136 **53B-8a-105. Additional powers of board as to the Utah Educational Savings Plan**
137 **Trust.**

138 The board has all powers necessary to carry out and effectuate the purposes, objectives,
139 and provisions of this chapter pertaining to the Utah Educational Savings Plan Trust, including
140 the power to:

141 (1) engage:

142 (a) one or more investment advisors, registered under the Investment Advisors Act of
143 1940, with at least 5,000 advisory clients and at least \$1,000,000,000 under management, to
144 provide investment advice to the board with respect to the assets held in each account;

145 (b) an administrator to perform recordkeeping functions on behalf of the Utah
146 Educational Savings Plan Trust; and

147 (c) a custodian for the safekeeping of the assets of the Utah Educational Savings Plan
148 Trust;

149 (2) carry out studies and projections in order to advise account owners regarding
150 present and estimated future higher education costs and levels of financial participation in the

151 Utah Educational Savings Plan Trust required in order to enable account owners to achieve
152 their educational funding objective;

153 (3) contract for goods and services and engage personnel as necessary, including
154 consultants, actuaries, managers, counsel, and auditors for the purpose of rendering
155 professional, managerial, and technical assistance and advice, all of which contract obligations
156 and services shall be payable from any moneys of the Utah Educational Savings Plan Trust;

157 (4) participate in any other way in any federal, state, or local governmental program for
158 the benefit of the Utah Educational Savings Plan Trust;

159 (5) promulgate, impose, and collect administrative fees and charges in connection with
160 transactions of the Utah Educational Savings Plan Trust, and provide for reasonable service
161 charges, including penalties for cancellations and late payments;

162 (6) procure insurance against any loss in connection with the property, assets, or
163 activities of the Utah Educational Savings Plan Trust;

164 (7) administer the funds of the Utah Educational Savings Plan Trust;

165 (8) solicit and accept for the benefit of the endowment fund gifts, grants, and other
166 moneys, including general fund moneys from the state and grants from any federal or other
167 governmental agency;

168 (9) procure insurance indemnifying any member of the board from personal loss or
169 accountability arising from liability resulting from a member's action or inaction as a member
170 of the board; and

171 (10) make rules and regulations for the administration of the Utah Educational Savings
172 Plan Trust.

173 Section 5. Section **53B-8a-106** is amended to read:

174 **53B-8a-106. Account agreements.**

175 The Utah Educational Savings Plan Trust may enter into account agreements with
176 account owners on behalf of beneficiaries under the following terms and agreements:

177 (1) (a) An account agreement may require an account owner to agree to invest a
178 specific amount of money in the Utah Educational Savings Plan Trust for a specific period of
179 time for the benefit of a specific beneficiary, not to exceed an amount determined by the
180 program administrator.

181 (b) Account agreements may be amended to provide for adjusted levels of payments

182 based upon changed circumstances or changes in educational plans.

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

186 (d) ~~[The]~~ Subject to Subsection (1)(e), the maximum amount of [investments] a
187 qualified investment that may be subtracted from federal taxable income [of a resident or
188 nonresident individual under Subsection 59-10-114(2)(i) shall be \$1,510] for a taxable year in
189 accordance with Title 59, Chapter 10, Individual Income Tax Act, is:

190 (i) for a resident or nonresident estate or trust, \$1,560 for each individual beneficiary
191 for the [2005 calendar year and an amount adjusted annually thereafter to reflect increases in
192 the Consumer Price Index.] taxable year beginning on or after January 1, 2006, but beginning
193 on or before December 31, 2006;

194 (ii) for a resident or nonresident individual other than a husband and wife who file a
195 single return jointly, \$1,560 for each individual beneficiary for the taxable year beginning on or
196 after January 1, 2006, but beginning on or before December 31, 2006;

197 (iii) for a husband and wife who file a single return jointly, \$3,120 for each individual
198 beneficiary:

199 (A) for the taxable year beginning on or after January 1, 2006, but beginning on or
200 before December 31, 2006; and

201 (B) regardless of whether the Utah Educational Savings Plan Trust has entered into:

202 (I) a separate account agreement with each spouse; or

203 (II) a single account agreement with both spouses jointly.

204 (e) (i) For taxable years beginning on or after January 1, 2007, the program
205 administrator shall increase or decrease the maximum amount of a qualified investment
206 described in Subsections (1)(d)(i) and (ii) that may be subtracted from federal taxable income
207 for a taxable year in accordance with Title 59, Chapter 10, Individual Income Tax Act, by a
208 percentage equal to the percentage difference between the consumer price index for the
209 preceding calendar year and the consumer price index for the calendar year 2005.

210 (ii) After making an increase or decrease required by Subsection (1)(e)(i), the program
211 administrator shall:

212 (A) round the maximum amount of the qualified investments described in Subsections

213 (1)(d)(i) and (ii) increased or decreased under Subsection (1)(e)(i) to the nearest ten dollar
214 increment; and

215 (B) increase or decrease the maximum amount of the qualified investment described in
216 Subsection (1)(d)(iii) so that the maximum amount of the qualified investment described in
217 Subsection (1)(d)(iii) is equal to the product of:

218 (I) the maximum amount of the qualified investment described in Subsection (1)(d)(ii)
219 as rounded under Subsection (1)(e)(ii)(A); and

220 (II) two.

221 (iii) For purposes of Subsections (1)(e)(i) and (ii), the program administrator shall
222 calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue
223 Code.

224 (2) (a) (i) Beneficiaries designated in account agreements must be designated after
225 birth and before age 19 for the participant to subtract [~~allowable investments~~] a qualified
226 investment from federal taxable income under [~~Subsection 59-10-114(2)(i)~~] Title 59, Chapter
227 10, Individual Income Tax Act.

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

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

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

236 (3) Each account agreement shall state clearly that there are no guarantees regarding
237 moneys in the Utah Educational Savings Plan Trust as to the return of principal and that losses
238 could occur.

239 (4) Each account agreement shall provide that:

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

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

243 (c) no account owner may borrow from the Utah Educational Savings Plan Trust.

244 (5) The execution of an account agreement by the trust may not guarantee in any way
245 that higher education costs will be equal to projections and estimates provided by the Utah
246 Educational Savings Plan Trust or that the beneficiary named in any participation agreement
247 will:

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

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

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

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

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

258 (7) Account agreements may be freely amended throughout their terms in order to
259 enable account owners to increase or decrease the level of participation, change the designation
260 of beneficiaries, and carry out similar matters as authorized by rule.

261 (8) Each account agreement shall provide that:

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

264 (b) the program administrator may amend the agreement unilaterally and retroactively,
265 if necessary, to maintain the Utah Educational Savings Plan Trust as a qualified tuition
266 program under Section 529 Internal Revenue Code.

267 Section 6. Section **53B-8a-107** is amended to read:

268 **53B-8a-107. Program, endowment, and administrative funds -- Investment and**
269 **payments from funds.**

270 (1) (a) The board shall segregate moneys received by the Utah Educational Savings
271 Plan Trust into three funds, the program fund, the endowment fund, and the administrative
272 fund.

273 (b) No more than two percentage points of the interest earned annually in the
274 endowment fund may be transferred to the administrative fund for the purpose of paying

275 operating costs associated with administering the Utah Educational Savings Plan Trust and as
276 required under Sections 53B-8a-103 through 53B-8a-105.

277 (c) Transfers may be made from the program fund to the administrative fund to pay
278 operating costs:

279 (i) associated with administering the Utah Educational Savings Plan Trust and as
280 required under Sections 53B-8a-103 through 53B-8a-105; and

281 (ii) as included in the budget approved by the board of directors of the Utah
282 Educational Savings Plan Trust.

283 (d) All moneys paid by account owners in connection with account agreements shall be
284 deposited as received into separate accounts within the program fund which shall be promptly
285 invested and accounted for separately.

286 (e) All moneys received by the Utah Educational Savings Plan Trust from the proceeds
287 of gifts and other endowments for the purposes of the Utah Educational Savings Plan Trust
288 shall be deposited as received into the endowment fund, which shall be promptly invested and
289 accounted for separately.

290 (f) Any gifts, grants, or donations made by any governmental unit or any person, firm,
291 partnership, or corporation to the Utah Educational Savings Plan Trust for deposit to the
292 endowment fund shall be a grant, gift, or donation to the state for the accomplishment of a
293 valid public eleemosynary, charitable, and educational purpose and shall not be included in the
294 income of the donor for Utah tax purposes.

295 (2) (a) Through March 31, 2005, each account owner under an account agreement may
296 receive an interest in a portion, as determined by policy, of the investment income derived by
297 the endowment fund in any year during which funds are invested in the program fund on behalf
298 of the beneficiary, to be payable as provided in Subsection (2)(c).

299 (b) The interest in the investment income derived by the endowment fund that accrues
300 to a beneficiary in any year shall be in the ratio that the principal amount paid by the account
301 owner under the account agreement and investment income earned to date under the agreement
302 bears to the principal amount of all moneys, funds, and securities then held in the program fund
303 during the year.

304 (c) (i) Except as provided in Subsection (2)(c)(ii), at the time any payments or
305 disbursements for higher education costs are made from the Utah Educational Savings Plan

306 Trust to any institution of higher education under an account agreement, the Utah Educational
307 Savings Plan Trust shall add to that payment from endowment fund income a pro rata portion
308 of the amount calculated pursuant to Subsection (2)(b), which shall be transferred directly to
309 the institution of higher education simultaneously with the payment made from the program
310 fund and shall be used for payment of the higher education costs of the beneficiary, but not to
311 exceed the amount which, in combination with the current payment due from the program
312 fund, equals the beneficiary's higher education costs for the current period of enrollment.

313 (ii) Effective March 31, 2005, any interest income on the endowment fund accruing to
314 a beneficiary that has not been transferred to an institution of higher education pursuant to
315 Subsection (2)(c)(i) shall be transferred to the beneficiary's program fund account.

316 (3) Beginning on April 1, 2005:

317 (a) interest income on the endowment fund may be used to enhance the savings of low
318 income account owners investing in the Utah Educational Savings Plan Trust, as provided by
319 rules of the board; and

320 (b) the original principal in the endowment fund may be transferred to the
321 administrative fund upon approval by the board.

322 (4) Endowment fund earnings not accruing to a beneficiary under a participation
323 agreement or not transferred to the administrative fund shall be reinvested in the endowment
324 fund.

325 (5) Moneys accrued by account owners in the program fund of the Utah Educational
326 Savings Plan Trust may be used for payments to any institution of higher education.

327 (6) No rights to any moneys derived from the endowment fund shall exist if moneys
328 payable under the account agreement are paid to an education institution which is not an
329 institution of higher education as defined in Section 53B-8a-102.

330 Section 7. Section **53B-8a-108** is amended to read:

331 **53B-8a-108. Cancellation of agreements.**

332 (1) Any account owner may cancel an account agreement at will.

333 (2) If an account agreement is cancelled by the account owner, the current account
334 balance shall be disbursed to the account owner less:

335 (a) an administrative refund fee, which may be charged by the Utah Educational
336 Savings Plan Trust, except as provided in Subsection (3); and

- 337 (b) any penalty or tax required to be withheld by the Internal Revenue Code.
- 338 (3) An administration refund fee may not be levied by the Utah Educational Savings
- 339 Plan Trust if the account agreement is cancelled due to:
- 340 (a) the death of the beneficiary; or
- 341 (b) the permanent disability or mental incapacity of the beneficiary.
- 342 (4) The board shall make rules for the disposition of monies transferred to an account
- 343 pursuant to Subsection 53A-8a-107(2)(c)(ii) and the earnings on those monies when an account
- 344 agreement is cancelled.

345 Section 8. Section **53B-8a-109** is amended to read:

346 **53B-8a-109. Repayment and ownership of payments and investment income --**
347 **Transfer of ownership rights.**

348 (1) (a) The account owner retains ownership of all payments made under the account
349 agreement until utilized to pay higher education costs for the beneficiary.

350 (b) All income derived from the investment of the payments made by the account
351 owner shall be considered to be held in trust for the benefit of the beneficiary.

352 (2) The institution of higher education shall obtain ownership of the payments made
353 for the higher education costs paid to the institution at the time each payment is made to the
354 institution.

355 (3) Any amounts that may be paid pursuant to the Utah Educational Savings Plan Trust
356 that are not listed in this section are owned by the Utah Educational Savings Plan Trust.

357 (4) (a) An account owner may transfer ownership rights to another eligible person.

358 (b) The transfer shall be affected and the property distributed in accordance with
359 administrative regulations promulgated by the board or the terms of the account agreement.

360 Section 9. Section **53B-8a-111** is amended to read:

361 **53B-8a-111. Annual audited financial report to governor, Legislature, and state**
362 **auditor.**

363 (1) The board shall submit an annual audited financial report, prepared in accordance
364 with generally accepted accounting principles, on the operations of the Utah Educational
365 Savings Plan Trust by November 1 to the governor, the Legislature, and the state auditor.

366 (2) The annual audit shall be made either by the state auditor or by an independent
367 certified public accountant designated by the state auditor and shall include direct and indirect

368 costs attributable to the use of outside consultants, independent contractors, and any other
369 persons who are not state employees.

370 (3) The annual audit shall be supplemented by the following information prepared by
371 the board:

372 (a) any studies or evaluations prepared in the preceding year;

373 (b) a summary of the benefits provided by the Utah Educational Savings Plan Trust
374 including the number of participants and beneficiaries in the Utah Educational Savings Plan
375 Trust; and

376 (c) any other information which is relevant in order to make a full, fair, and effective
377 disclosure of the operations of the Utah Educational Savings Plan Trust.

378 Section 10. Section **53B-8a-112** is amended to read:

379 **53B-8a-112. Tax considerations.**

380 (1) For tax purposes the property of the Utah Educational Savings Plan Trust and its
381 income are governed by Sections 59-7-105, 59-7-106, 59-10-114, [~~and~~] 59-10-201, and
382 59-10-202.

383 (2) The tax commission, in consultation with the board, may adopt rules necessary to
384 monitor and implement the tax provisions referred to in Subsection (1) as related to the
385 property of the Utah Educational Savings Plan Trust and its income.

386 Section 11. Section **53B-8a-113** is amended to read:

387 **53B-8a-113. Property rights to assets in Utah Educational Savings Plan Trust.**

388 (1) The assets of the Utah Educational Savings Plan Trust, including the program fund
389 and the endowment fund, shall at all times be preserved, invested, and expended solely and
390 only for the purposes of the Utah Educational Savings Plan Trust and shall be held in trust for
391 the account owners and beneficiaries.

392 (2) No property rights in the Utah Educational Savings Plan Trust shall exist in favor
393 of the state.

394 (3) The assets may not be transferred or used by the state for any purposes other than
395 the purposes of the Utah Educational Savings Plan Trust.

396 Section 12. Section **59-10-114** is amended to read:

397 **59-10-114. Additions to and subtractions from federal taxable income of an**
398 **individual.**

- 399 (1) There shall be added to federal taxable income of a resident or nonresident
400 individual:
- 401 (a) the amount of any income tax imposed by this or any predecessor Utah individual
402 income tax law and the amount of any income tax imposed by the laws of another state, the
403 District of Columbia, or a possession of the United States, to the extent deducted from adjusted
404 gross income in determining federal taxable income;
- 405 (b) a lump sum distribution that the taxpayer does not include in adjusted gross income
406 on the taxpayer's federal individual income tax return for the taxable year;
- 407 (c) for taxable years beginning on or after January 1, 2002, the amount of a child's
408 income calculated under Subsection (5) that:
- 409 (i) a parent elects to report on the parent's federal individual income tax return for the
410 taxable year; and
- 411 (ii) the parent does not include in adjusted gross income on the parent's federal
412 individual income tax return for the taxable year;
- 413 (d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue
414 Code;
- 415 (e) a withdrawal from a medical care savings account and any penalty imposed in the
416 taxable year if:
- 417 (i) the resident or nonresident individual did not deduct or include the amounts on the
418 resident or nonresident individual's federal individual income tax return pursuant to Section
419 220, Internal Revenue Code;
- 420 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and
- 421 (iii) the withdrawal is deducted by the resident or nonresident individual under
422 Subsection (2)(h);
- 423 (f) the amount disbursed [~~to~~] under Title 53B, Chapter 8a, Higher Education Savings
424 Incentive Program, to a resident or nonresident individual who is an account owner [under Title
425 53B, Chapter 8a, Higher Education Savings Incentive Program], for the taxable year for which
426 the amount is disbursed, if that amount disbursed to the resident or nonresident individual who
427 is the account owner:
- 428 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and
- 429 (ii) is [~~deducted~~] subtracted by the resident or nonresident individual:

- 430 (A) who is the account owner [under]; and
431 (B) in accordance with Subsection (2)(i);
432 (g) except as provided in Subsection (6), for taxable years beginning on or after
433 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
434 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
435 one or more of the following entities:
436 (i) a state other than this state;
437 (ii) the District of Columbia;
438 (iii) a political subdivision of a state other than this state; or
439 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
440 (iii);
441 (h) subject to Subsection (2)(n), any distribution received by a resident beneficiary of a
442 resident trust of income that was taxed at the trust level for federal tax purposes, but was
443 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(c);
444 (i) any distribution received by a resident beneficiary of a nonresident trust of
445 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
446 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
447 was not taxed at the trust level by any state, with undistributed distributable net income
448 considered to be distributed from the most recently accumulated undistributed distributable net
449 income; and
450 (j) any adoption expense:
451 (i) for which a resident or nonresident individual receives reimbursement from another
452 person; and
453 (ii) to the extent to which the resident or nonresident individual deducts that adoption
454 expense:
455 (A) under Subsection (2)(c); or
456 (B) from federal taxable income on a federal individual income tax return.
457 (2) There shall be subtracted from federal taxable income of a resident or nonresident
458 individual:
459 (a) the interest or a dividend on obligations or securities of the United States and its
460 possessions or of any authority, commission, or instrumentality of the United States, to the

461 extent that interest or dividend is included in gross income for federal income tax purposes for
462 the taxable year but exempt from state income taxes under the laws of the United States, but
463 the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on
464 indebtedness incurred or continued to purchase or carry the obligations or securities described
465 in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend
466 income described in this Subsection (2)(a) to the extent that such expenses, including
467 amortizable bond premiums, are deductible in determining federal taxable income;

468 (b) 1/2 of the net amount of any income tax paid or payable to the United States after all
469 allowable credits, as reported on the United States individual income tax return of the taxpayer
470 for the same taxable year;

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

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

475 (A) paid; or

476 (B) incurred;

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

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

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

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

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

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

494 (i) for:

495 (A) the taxpayer;

496 (B) the taxpayer's spouse; and

497 (C) the taxpayer's dependents; and

498 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
499 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

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

507 (ii) a contribution deductible under this Subsection (2)(h) may not exceed either of the
508 following:

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

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

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

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

517 ~~[(i) the amount included in federal taxable income that was derived from money paid~~
518 ~~by an account owner to the program fund under Title 53B, Chapter 8a, Higher Education~~
519 ~~Savings Incentive Program, not to exceed amounts determined under Subsection~~
520 ~~53B-8a-106(1)(d), and investment income earned on account agreements entered into under~~
521 ~~Section 53B-8a-106 that is included in federal taxable income, but only when the funds are~~
522 ~~used for qualified higher education costs of the beneficiary;]~~

523 (i) subject to Subsection (1)(f), for taxable years beginning on or after January 1, 2007,
524 the amount of a qualified investment as defined in Section 53B-8a-102 that:

525 (i) is made during the taxable year;

526 (ii) is not deducted on a federal individual income return; and

527 (iii) does not exceed the maximum amount of the qualified investment that may be
528 subtracted from federal taxable income for a taxable year in accordance with Subsections
529 53B-8a-106(1)(d) and (e);

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

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

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

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

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

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

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

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

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

546 and

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

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

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

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

554 a resident or nonresident individual has an ownership interest in a Utah small business
555 corporation;

556 (m) for the taxable year beginning on or after January 1, 2005, but beginning on or
557 before December 31, 2005, the first \$2,200 of income a qualifying military servicemember
558 receives:

559 (i) for service:

560 (A) as a qualifying military servicemember; or
561 (B) under an order into active service in accordance with Section 39-1-5; and

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

564 (n) an amount received by a resident or nonresident individual or distribution received
565 by a resident or nonresident beneficiary of a resident trust:

566 (i) if that amount or distribution constitutes a refund of taxes imposed by:

567 (A) a state; or
568 (B) the District of Columbia; and

569 (ii) to the extent that amount or distribution is included in adjusted gross income for
570 that taxable year on the federal individual income tax return of the resident or nonresident
571 individual or resident or nonresident beneficiary of a resident trust;

572 (o) the amount of a railroad retirement benefit:

573 (i) paid:

574 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
575 seq.;

576 (B) to a resident or nonresident individual; and
577 (C) for the taxable year; and

578 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
579 that resident or nonresident individual's federal individual income tax return for that taxable
580 year; and

581 (p) an amount:

582 (i) received by an enrolled member of an American Indian tribe; and
583 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
584 part on that amount in accordance with:

- 585 (A) federal law;
- 586 (B) a treaty; or
- 587 (C) a final decision issued by a court of competent jurisdiction.

588 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
589 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
590 \$4,800, except that:

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

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

597 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
598 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
599 reduced by 50 cents.

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

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

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

608 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
609 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

613 (d) For purposes of determining ownership of items of retirement income common law
614 doctrine will be applied in all cases even though some items may have originated from service
615 or investments in a community property state. Amounts received by the spouse of a living

616 retiree because of the retiree's having been employed in a community property state are not
617 deductible as retirement income of such spouse.

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

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

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

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

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

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

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

630 (i) may not:

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

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

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

635 (ii) shall:

636 (A) provide for the implementation of the subtraction described in Subsection (2)(k);

637 (B) be in writing;

638 (C) be signed by:

639 (I) the governor; and

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

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

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

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

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

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

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

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

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

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

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

658 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
659 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
660 2000 Form 8814 if for purposes of federal individual income taxes the information contained
661 on 2000 Form 8814 is reported on a form other than Form 8814; and

662 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
663 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
664 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
665 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
666 8814.

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

669 (i) the lesser of:

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

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

672 (I) the child's taxable interest;

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

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

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

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

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

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

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

686 (i) the entity; or

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

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

689 Section 13. Section **59-10-202** is amended to read:

690 **59-10-202. Additions to and subtractions from federal taxable income of a**
691 **resident or nonresident estate or trust.**

692 (1) There shall be added to federal taxable income of a resident or nonresident estate or
693 trust:

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

699 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3) of the
700 Internal Revenue Code, to the extent deductible under Section 62(a)(8) of the Internal Revenue
701 Code in determining adjusted gross income;

702 (c) except as provided in Subsection (3), for taxable years beginning on or after
703 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
704 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
705 one or more of the following entities:

706 (i) a state other than this state;

707 (ii) the District of Columbia;

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

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

711 (d) any portion of federal taxable income for a taxable year if that federal taxable
712 income is derived from stock:

713 (i) in an S corporation; and

714 (ii) that is held by an electing small business trust; [~~and~~]

715 (e) (i) the amount disbursed under Title 53B, Chapter 8a, Higher Education Savings
716 Incentive Program, to a resident or nonresident estate or trust that is an account owner, for the
717 taxable year for which the amount is disbursed, if that amount disbursed to the resident or
718 nonresident estate or trust that is the account owner:

719 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and

720 (B) is subtracted by the resident or nonresident estate or trust:

721 (I) that is the account owner; and

722 (II) in accordance with Subsection (2)(j)(i); and

723 (ii) the amount disbursed under Title 53B, Chapter 8a, Higher Education Savings
724 Incentive Program, to a resident or nonresident estate or trust that is an account owner, for the
725 taxable year beginning on or after January 1, 2007, but beginning on or before December 31,
726 2007, if that amount disbursed to the resident or nonresident estate or trust that is the account
727 owner:

728 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and

729 (B) is subtracted by the resident or nonresident estate or trust:

730 (I) that is the account owner; and

731 (II) in accordance with Subsection (2)(j)(ii); and

732 [~~(e)~~] (f) any fiduciary adjustments required by Section 59-10-210.

733 (2) There shall be subtracted from federal taxable income of a resident or nonresident
734 estate or trust:

735 (a) the interest or a dividend on obligations or securities of the United States and its
736 possessions or of any authority, commission, or instrumentality of the United States, to the
737 extent that interest or dividend is included in gross income for federal income tax purposes for
738 the taxable year but exempt from state income taxes under the laws of the United States, but
739 the amount subtracted under this Subsection (2) shall be reduced by any interest on

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

744 (b) 1/2 of the net amount of any income tax paid or payable to the United States after
745 all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the
746 same taxable year;

747 (c) income of an irrevocable resident trust if:

748 (i) the income would not be treated as state taxable income derived from Utah sources
749 under Section 59-10-204 if received by a nonresident trust;

750 (ii) the trust first became a resident trust on or after January 1, 2004;

751 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
752 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

753 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

754 (v) the amount subtracted under this Subsection (2) is reduced to the extent the settlor
755 or any other person is treated as an owner of any portion of the trust under Subtitle A,
756 Subchapter J, Subpart E of the Internal Revenue Code; and

757 (vi) the amount subtracted under this Subsection (2) is reduced by any interest on
758 indebtedness incurred or continued to purchase or carry the assets generating the income
759 described in this Subsection (2), and by any expenses incurred in the production of income
760 described in this Subsection (2), to the extent that those expenses, including amortizable bond
761 premiums, are deductible in determining federal taxable income;

762 (d) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or
763 nonresident estate or trust derived from a deceased Ute tribal member:

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

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

767 (e) (i) for taxable years beginning on or after January 1, 2003, the total amount of a
768 resident or nonresident estate's or trust's short-term capital gain or long-term capital gain on a
769 capital gain transaction:

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

771 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:
772 (I) to purchase qualifying stock in a Utah small business corporation; and
773 (II) within a 12-month period after the day on which the capital gain transaction occurs;
774 and
775 (C) if, prior to the purchase of the qualifying stock described in Subsection
776 (2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in
777 the Utah small business corporation that issued the qualifying stock; and
778 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
779 commission may make rules:
780 (A) defining the term "gross proceeds"; and
781 (B) for purposes of Subsection (2)(e)(i)(C), prescribing the circumstances under which
782 a resident or nonresident estate or trust has an ownership interest in a Utah small business
783 corporation;
784 (f) for the taxable year beginning on or after January 1, 2005, but beginning on or
785 before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or
786 trust that is derived from a deceased qualifying military servicemember:
787 (i) for service:
788 (A) as a qualifying military servicemember; or
789 (B) under an order into active service in accordance with Section 39-1-5; and
790 (ii) to the extent that income is included in total income on that resident or nonresident
791 estate's or trust's federal income tax return for estates and trusts for that taxable year;
792 (g) any amount:
793 (i) received by a resident or nonresident estate or trust;
794 (ii) that constitutes a refund of taxes imposed by:
795 (A) a state; or
796 (B) the District of Columbia; and
797 (iii) to the extent that amount is included in total income on that resident or nonresident
798 estate's or trust's federal tax return for estates and trusts for that taxable year;
799 (h) the amount of a railroad retirement benefit:
800 (i) paid:
801 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et

802 seq.;

803 (B) to a resident or nonresident estate or trust derived from a deceased resident or
804 nonresident individual; and

805 (C) for the taxable year; and

806 (ii) to the extent that railroad retirement benefit is included in total income on that
807 resident or nonresident estate's or trust's federal tax return for estates and trusts;

808 (i) an amount:

809 (i) received by a resident or nonresident estate or trust if that amount is derived from a
810 deceased enrolled member of an American Indian tribe; and

811 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
812 part on that amount in accordance with:

813 (A) federal law;

814 (B) a treaty; or

815 (C) a final decision issued by a court of competent jurisdiction; ~~and~~

816 (j) (i) subject to Subsection (1)(e)(i), for taxable years beginning on or after January 1,
817 2007, the amount of a qualified investment as defined in Section 53B-8a-102 that:

818 (A) is made during the taxable year;

819 (B) is not deducted on a federal tax return for estates and trusts; and

820 (C) does not exceed the maximum amount of the qualified investment that may be
821 subtracted from federal taxable income for a taxable year in accordance with Subsections
822 53B-8a-106(1)(d) and (e); and

823 (ii) subject to Subsection (1)(e)(ii), for the taxable year beginning on or after January 1,
824 2007, but beginning on or before December 31, 2007 only, and in addition to any subtraction a
825 resident or nonresident estate or trust makes in accordance with Subsection (2)(j)(i), the
826 amount of a qualified investment as defined in Section 53B-8a-102 that:

827 (A) a resident or nonresident estate or trust could have subtracted under Subsection
828 (2)(j)(i) for the taxable year beginning on or after January 1, 2006, but beginning on or before
829 December 31, 2006, had the subtraction under Subsection (2)(j)(i) been in effect for the taxable
830 year beginning on or after January 1, 2006, but beginning on or before December 31, 2006;

831 (B) is made during the taxable year beginning on or after January 1, 2006, but
832 beginning on or before December 31, 2006;

833 (C) is not deducted on a federal tax return for estates and trusts; and
834 (D) does not exceed the maximum amount of the qualified investment that may be
835 subtracted from federal taxable income:
836 (I) for the taxable year beginning on or after January 1, 2006, but beginning on or
837 before December 31, 2006; and
838 (II) in accordance with Subsections 53B-8a-106(1)(d) and (e); and
839 ~~(j)~~ (k) any fiduciary adjustments required by Section 59-10-210.
840 (3) Notwithstanding Subsection (1)(c), interest from bonds, notes, and other evidences
841 of indebtedness issued by an entity described in Subsections (1)(c)(i) through (iv) may not be
842 added to federal taxable income of a resident or nonresident estate or trust if, as annually
843 determined by the commission:
844 (a) for an entity described in Subsection (1)(c)(i) or (ii), the entity and all of the
845 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
846 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
847 (b) for an entity described in Subsection (1)(c)(iii) or (iv), the following do not impose
848 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
849 this state:
850 (i) the entity; or
851 (ii) (A) the state in which the entity is located; or
852 (B) the District of Columbia, if the entity is located within the District of Columbia.
853 (4) (a) A subtraction for an amount described in Subsection (2)(d) is allowed only if:
854 (i) the income is derived from a deceased Ute tribal member; and
855 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
856 requirements of this Subsection (4).
857 (b) The agreement described in Subsection (4)(a):
858 (i) may not:
859 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
860 (B) provide a subtraction under this section greater than or different from the
861 subtraction described in Subsection (2)(d); or
862 (C) affect the power of the state to establish rates of taxation; and
863 (ii) shall:

- 864 (A) provide for the implementation of the subtraction described in Subsection (2)(d);
- 865 (B) be in writing;
- 866 (C) be signed by:
- 867 (I) the governor; and
- 868 (II) the chair of the Business Committee of the Ute tribe;
- 869 (D) be conditioned on obtaining any approval required by federal law; and
- 870 (E) state the effective date of the agreement.

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

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

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

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

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

883 **Section 14. Retrospective operation.**

884 This bill has retrospective operation for taxable years beginning on or after January 1,
 885 2007.

Legislative Review Note
 as of 11-15-06 2:58 PM

Office of Legislative Research and General Counsel

Interim Committee Note
 as of 12-19-06 10:21 AM

The Revenue and Taxation Interim Committee recommended this bill.

H.B. 36 - Income Tax Additions and Subtractions for Higher Education Savings

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill is estimated to reduce the Education Fund by \$14,000 annually.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
Education Fund	\$0	\$0	\$0	\$0	(\$14,000)	(\$14,000)
Total	\$0	\$0	\$0	\$0	(\$14,000)	(\$14,000)

Individual, Business and/or Local Impact

Trusts which participate in the Utah Educational Savings Plan program will be allowed a deduction under the proposed statute.

12/22/2006, 11:43:19 AM, Lead Analyst: Wilko, A.

Office of the Legislative Fiscal Analyst