

Representative Fred R. Hunsaker proposes the following substitute bill:

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: Wayne L. Niederhauser

8 Cosponsor: Sheryl L. Allen

9
10 **LONG TITLE**

11 **General Description:**

12 This bill amends the Corporate Franchise and Income Taxes chapter and the Individual
13 Income Tax Act relating to additions to and subtractions from federal taxable income
14 for higher education savings.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ provides and modifies definitions;
- 18 ▶ provides that a resident or nonresident estate or trust may subtract certain qualified
19 investments in the Utah Educational Savings Plan Trust from federal taxable
20 income;
- 21 ▶ requires a resident or nonresident estate or trust that is an account owner under the
22 Utah Educational Savings Plan Trust to add to federal taxable income amounts not
23 expended for higher education costs under certain circumstances;
- 24 ▶ addresses the maximum amount of a qualified investment in the Utah Educational



25 Savings Plan Trust that a resident or nonresident individual or a resident or nonresident estate
26 or trust may subtract from federal taxable income;

27 ▶ modifies and clarifies the amount of a qualified investment in the Utah Educational

28 Savings Plan Trust that a corporation or a resident or nonresident individual may

29 subtract from federal taxable income;

30 ▶ modifies an addition to income for a corporation or a resident or nonresident

31 individual who is an account owner under the Utah Educational Savings Plan Trust

32 for amounts not expended for higher education costs under certain circumstances;

33 and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

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

39 2007.

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **53B-8a-102**, as last amended by Chapter 109, Laws of Utah 2005

43 **53B-8a-103**, as last amended by Chapter 109, Laws of Utah 2005

44 **53B-8a-104**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session

45 **53B-8a-105**, as last amended by Chapter 109, Laws of Utah 2005

46 **53B-8a-106**, as last amended by Chapter 223, Laws of Utah 2006

47 **53B-8a-107**, as last amended by Chapter 109, Laws of Utah 2005

48 **53B-8a-108**, as last amended by Chapter 109, Laws of Utah 2005

49 **53B-8a-109**, as last amended by Chapter 109, Laws of Utah 2005

50 **53B-8a-111**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session

51 **53B-8a-112**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session

52 **53B-8a-113**, as last amended by Chapter 109, Laws of Utah 2005

53 **59-7-105**, as last amended by Chapter 109, Laws of Utah 2005

54 **59-7-106**, as last amended by Chapter 211, Laws of Utah 2002

55 **59-10-114**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session

56 **59-10-202**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session

57

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

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

60 **53B-8a-102. Definitions.**

61 As used in this chapter:

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

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

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

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

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

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

78 (7) "Endowment fund" means the endowment fund established under Section
79 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan Trust.

80 (8) "Higher education costs" means ~~[the certified costs of tuition, fees, room and board,~~
81 ~~books, supplies, and equipment required for the enrollment or attendance of a designated~~
82 ~~beneficiary at an institution of higher education]~~ qualified higher education expenses as defined
83 in Section 529(e)(3), Internal Revenue Code.

84 (9) "Institution of higher education" means a qualified proprietary school approved by
85 the board, a two-year or four-year public or regionally accredited private nonprofit college or
86 university or a Utah college of applied technology, with regard to students enrolled in

87 postsecondary training or education programs.

88 (10) "Program administrator" means the administrator of the Utah Educational Savings
89 Plan Trust appointed by the board to administer and manage the Utah Educational Savings Plan
90 Trust.

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

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

95 [~~12~~] (13) "Tuition and fees" means the quarterly or semester charges imposed to
96 attend an institution of higher education and required as a condition of enrollment.

97 [~~13~~] (14) "Utah Educational Savings Plan Trust" [~~or "trust"~~] means the Utah
98 Educational Savings Plan Trust created under Section 53B-8a-103.

99 [~~14~~] (15) "Vested account" means an account agreement which has been in full force
100 and effect during eight continuous years of residency of the beneficiary in the state while
101 participating in the Utah Educational Savings Plan Trust.

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

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

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

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

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

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

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

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

111 (d) invest moneys within the program fund:

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

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

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

- 118 (e) invest moneys within the endowment fund in any investments that are:
- 119 (i) determined by the board to be appropriate;
- 120 (ii) approved by the state treasurer; and
- 121 (iii) in compliance with rules of the State Money Management Council applicable to
- 122 gift funds;
- 123 (f) enter into agreements with any institution of higher education, any federal or state
- 124 agency, or other entity as required to implement this chapter;
- 125 (g) accept any grants, gifts, legislative appropriations, and other moneys from the state,
- 126 any unit of federal, state, or local government, or any other person, firm, partnership, or
- 127 corporation for deposit to the administrative fund, endowment fund, or the program fund;
- 128 (h) enter into account agreements with account owners;
- 129 (i) make payments to institutions of higher education pursuant to account agreements
- 130 on behalf of beneficiaries;
- 131 (j) make refunds to account owners upon the termination of account agreements
- 132 pursuant to the provisions of this chapter;
- 133 (k) appoint a program administrator and determine the duties of the program
- 134 administrator and other staff as necessary and fix their compensation;
- 135 (l) make provision for the payment of costs of administration and operation of the Utah
- 136 Educational Savings Plan Trust; and
- 137 (m) carry out the duties and obligations of the Utah Educational Savings Plan Trust
- 138 pursuant to this chapter.

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

140 **53B-8a-104. Office facilities, clerical, and administrative support for the Utah**
141 **Educational Savings Plan Trust.**

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

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

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

147 **53B-8a-105. Additional powers of board as to the Utah Educational Savings Plan**
148 **Trust.**

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

152 (1) engage:

153 (a) one or more investment advisors, registered under the Investment Advisors Act of
154 1940, with at least 5,000 advisory clients and at least \$1,000,000,000 under management, to
155 provide investment advice to the board with respect to the assets held in each account;

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

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

160 (2) carry out studies and projections in order to advise account owners regarding
161 present and estimated future higher education costs and levels of financial participation in the
162 Utah Educational Savings Plan Trust required in order to enable account owners to achieve
163 their educational funding objective;

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

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

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

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

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

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

179 (9) procure insurance indemnifying any member of the board from personal loss or

180 accountability arising from liability resulting from a member's action or inaction as a member
181 of the board; and

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

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

185 **53B-8a-106. Account agreements.**

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

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

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

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

197 (d) Subject to Subsection (1)(f), the maximum amount of a qualified investment that a
198 corporation that is an account owner may subtract from unadjusted income for a taxable year in
199 accordance with Title 59, Chapter 7, Corporate Franchise and Income Taxes, is \$1,560 for each
200 individual beneficiary for the taxable year beginning on or after January 1, 2006, but beginning
201 on or before December 31, 2006.

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

206 (i) for a resident or nonresident estate or trust that is an account owner, \$1,560 for each
207 individual beneficiary for the [2005 calendar year and an amount adjusted annually thereafter
208 to reflect increases in the Consumer Price Index.] taxable year beginning on or after January 1,
209 2006, but beginning on or before December 31, 2006;

210 (ii) for a resident or nonresident individual that is an account owner, other than a

211 husband and wife who file a single return jointly, \$1,560 for each individual beneficiary for the
212 taxable year beginning on or after January 1, 2006, but beginning on or before December 31,
213 2006;

214 (iii) for a husband and wife who are account owners and file a single return jointly,
215 \$3,120 for each individual beneficiary:

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

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

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

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

221 (f) (i) For taxable years beginning on or after January 1, 2007, the program
222 administrator shall increase or decrease the maximum amount of a qualified investment
223 described in Subsections (1)(d) and (1)(e)(i) and (ii) that may be subtracted from income for a
224 taxable year, by a percentage equal to the percentage difference between the consumer price
225 index for the preceding calendar year and the consumer price index for the calendar year 2005.

226 (ii) After making an increase or decrease required by Subsection (1)(f)(i), the program
227 administrator shall:

228 (A) round the maximum amount of the qualified investments described in Subsections
229 (1)(d) and (1)(e)(i) and (ii) increased or decreased under Subsection (1)(f)(i) to the nearest ten
230 dollar increment; and

231 (B) increase or decrease the maximum amount of the qualified investment described in
232 Subsection (1)(e)(iii) so that the maximum amount of the qualified investment described in
233 Subsection (1)(e)(iii) is equal to the product of:

234 (I) the maximum amount of the qualified investment described in Subsection (1)(e)(ii)
235 as rounded under Subsection (1)(f)(ii)(A); and

236 (II) two.

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

240 (2) (a) (i) Beneficiaries designated in account agreements must be designated after
241 birth and before age 19 for [the participant] an account owner to subtract [allowable

242 investments] a qualified investment from [~~federal taxable~~] income under [Subsection
243 ~~59-10-114(2)(i)~~];

244 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

245 (B) Title 59, Chapter 10, Individual Income Tax Act.

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

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

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

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

257 (4) Each account agreement shall provide that:

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

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

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

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

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

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

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

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

272 (6) Beneficiaries may be changed as permitted by the rules and regulations of the board

273 upon written request of the account owner prior to the date of admission of any beneficiary
274 under an account agreement by an institution of higher education so long as the substitute
275 beneficiary is eligible for participation.

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

279 (8) Each account agreement shall provide that:

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

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

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

286 **53B-8a-107. Program, endowment, and administrative funds -- Investment and**
287 **payments from funds.**

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

291 (b) No more than two percentage points of the interest earned annually in the
292 endowment fund may be transferred to the administrative fund for the purpose of paying
293 operating costs associated with administering the Utah Educational Savings Plan Trust and as
294 required under Sections 53B-8a-103 through 53B-8a-105.

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

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

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

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

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

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

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

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

322 (c) (i) Except as provided in Subsection (2)(c)(ii), at the time any payments or
323 disbursements for higher education costs are made from the Utah Educational Savings Plan
324 Trust to any institution of higher education under an account agreement, the Utah Educational
325 Savings Plan Trust shall add to that payment from endowment fund income a pro rata portion
326 of the amount calculated pursuant to Subsection (2)(b), which shall be transferred directly to
327 the institution of higher education simultaneously with the payment made from the program
328 fund and shall be used for payment of the higher education costs of the beneficiary, but not to
329 exceed the amount which, in combination with the current payment due from the program
330 fund, equals the beneficiary's higher education costs for the current period of enrollment.

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

334 (3) Beginning on April 1, 2005:

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

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

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

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

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

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

349 **53B-8a-108. Cancellation of agreements.**

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

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

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

355 (b) any penalty or tax required to be withheld by the Internal Revenue Code.

356 (3) An administration refund fee may not be levied by the Utah Educational Savings
357 Plan Trust if the account agreement is cancelled due to:

358 (a) the death of the beneficiary; or

359 (b) the permanent disability or mental incapacity of the beneficiary.

360 (4) The board shall make rules for the disposition of monies transferred to an account
361 pursuant to Subsection 53A-8a-107(2)(c)(ii) and the earnings on those monies when an account
362 agreement is cancelled.

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

364 **53B-8a-109. Repayment and ownership of payments and investment income --**

365 **Transfer of ownership rights.**

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

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

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

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

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

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

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

379 **53B-8a-111. Annual audited financial report to governor, Legislature, and state**
380 **auditor.**

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

384 (2) The annual audit shall be made either by the state auditor or by an independent
385 certified public accountant designated by the state auditor and shall include direct and indirect
386 costs attributable to the use of outside consultants, independent contractors, and any other
387 persons who are not state employees.

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

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

391 (b) a summary of the benefits provided by the Utah Educational Savings Plan Trust
392 including the number of participants and beneficiaries in the Utah Educational Savings Plan
393 Trust; and

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

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

397 **53B-8a-112. Tax considerations.**

398 (1) For tax purposes the property of the Utah Educational Savings Plan Trust and its
399 income are governed by Sections 59-7-105, 59-7-106, 59-10-114, [~~and~~] 59-10-201, and
400 59-10-202.

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

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

405 **53B-8a-113. Property rights to assets in Utah Educational Savings Plan Trust.**

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

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

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

414 Section 12. Section **59-7-105** is amended to read:

415 **59-7-105. Additions to unadjusted income.**

416 In computing adjusted income the following amounts shall be added to unadjusted
417 income:

418 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state
419 of the United States, including any agency and instrumentality of a state of the United States;

420 (2) the amount of any deduction taken on a corporation's federal return for taxes paid
421 by a corporation:

422 (a) to Utah for taxes imposed by this chapter; and

423 (b) to another state of the United States, a foreign country, a United States possession,
424 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or
425 exercising its corporate franchise, including income, franchise, corporate stock and business
426 and occupation taxes;

427 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and

- 428 (2)(a);
- 429 (4) capital losses that have been deducted on a Utah corporate return in previous years;
- 430 (5) any deduction on the federal return that has been previously deducted on the Utah
- 431 return;
- 432 (6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;
- 433 (7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated
- 434 technological equipment;
- 435 (8) charitable contributions, to the extent deducted on the federal return when
- 436 determining federal taxable income;
- 437 (9) the amount of gain or loss determined under Section 59-7-114 relating to a target
- 438 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already
- 439 been included in the unadjusted income of the target corporation;
- 440 (10) the amount of gain or loss determined under Section 59-7-115 relating to
- 441 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
- 442 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
- 443 income of the target corporation;
- 444 (11) adjustments to gains, losses, depreciation expense, amortization expense, and
- 445 similar items due to a difference between basis for federal purposes and basis as computed
- 446 under Section 59-7-107; and
- 447 (12) the amount [~~disbursed to~~] withdrawn under Title 53B, Chapter 8a, Higher
- 448 Education Savings Incentive Program, from the account of a corporation that is an account
- 449 owner [under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, to the
- 450 extent deducted on a Utah return in previous years and not used for qualified higher education
- 451 costs of the beneficiary, in the year in which the amount is disbursed.] as defined in Section
- 452 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn
- 453 from the account of the corporation that is the account owner:
- 454 (a) is not expended for higher education costs as defined in Section 53B-8a-102; and
- 455 (b) is subtracted by the corporation:
- 456 (i) that is the account owner; and
- 457 (ii) in accordance with Subsection 59-7-106(18).
- 458 Section 13. Section **59-7-106** is amended to read:

459 **59-7-106. Subtractions from unadjusted income.**

460 In computing adjusted income the following amounts shall be subtracted from
461 unadjusted income:

462 (1) the foreign dividend gross-up included in gross income for federal income tax
463 purposes under Section 78, Internal Revenue Code;

464 (2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct
465 the loss on the current Utah return. The deduction shall be made by claiming the deduction on
466 the current Utah return which shall be filed by the due date of the return, including extensions.

467 For the purposes of this subsection all capital losses in a given year must be:

468 (a) deducted in the year incurred; or

469 (b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
470 Code;

471 (3) the decrease in salary expense deduction for federal income tax purposes due to
472 claiming the federal jobs credit under Section 51, Internal Revenue Code;

473 (4) the decrease in qualified research and basic research expense deduction for federal
474 income tax purposes due to claiming the federal research and development credit under Section
475 41, Internal Revenue Code;

476 (5) the decrease in qualified clinical testing expense deduction for federal income tax
477 purposes due to claiming the federal orphan drug credit under Section 28, Internal Revenue
478 Code;

479 (6) any decrease in any expense deduction for federal income tax purposes due to
480 claiming any other federal credit;

481 (7) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and
482 (2)(b);

483 (8) any income on the federal corporate return that has been previously taxed by Utah;

484 (9) amounts included in federal taxable income that are due to refunds of taxes
485 imposed for the privilege of doing business, or exercising a corporate franchise, including
486 income, franchise, corporate stock and business and occupation taxes paid by the corporation to
487 Utah, another state of the United States, a foreign country, a United States possession, or the
488 Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income
489 under Section 59-7-105;

490 (10) charitable contributions, to the extent allowed as a subtraction under Section
491 59-7-109;

492 (11) (a) 50% of the dividends deemed received or received from subsidiaries which are
493 members of the unitary group and are organized or incorporated outside of the United States
494 unless such subsidiaries are included in a combined report under Section 59-7-402 or 59-7-403.
495 In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the
496 dividends deemed received or received, the expense directly attributable to those dividends.
497 Interest expense attributable to excluded dividends shall be determined by multiplying interest
498 expense by a fraction, the numerator of which is the taxpayer's average investment in such
499 dividend paying subsidiaries, and the denominator of which is the taxpayer's average total
500 investment in assets;

501 (b) in determining income apportionable to this state, a portion of the factors of a
502 foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be
503 included in the combined report factors. The portion to be included shall be determined by
504 multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the
505 numerator of which is the amount of the dividend paid by the foreign subsidiary which is
506 included in adjusted income, and the denominator of which is the current year earnings and
507 profits of the foreign subsidiary as determined under the Internal Revenue Code;

508 (12) (a) 50% of the adjusted income of a foreign operating company unless the
509 taxpayer has elected to file a worldwide combined report as provided in Section 59-7-403. For
510 purposes of this subsection, when calculating the adjusted income of a foreign operating
511 company, a foreign operating company may not deduct the subtractions allowable under this
512 subsection and Subsection (11);

513 (b) in determining income apportionable to this state, the factors for a foreign operating
514 company shall be included in the combined report factors in the same percentage its adjusted
515 income is included in the combined adjusted income;

516 (13) the amount of gain or loss which is included in unadjusted income but not
517 recognized for federal purposes on stock sold or exchanged by a member of a selling
518 consolidated group as defined in Section 338, Internal Revenue Code, if an election has been
519 made pursuant to Section 338(h)(10), Internal Revenue Code;

520 (14) the amount of gain or loss which is included in unadjusted income but not

521 recognized for federal purposes on stock sold, exchanged, or distributed by a corporation
522 pursuant to Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
523 Revenue Code, has been made for federal purposes;

524 (15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and
525 similar items due to a difference between basis for federal purposes and basis as computed
526 under Section 59-7-107; and

527 (b) if there has been a reduction in federal basis for a federal tax credit where there is
528 no corresponding Utah tax credit, the amount of the reduction in basis shall be allowed as an
529 expense in the year of the federal credit;

530 (16) any interest expense not deducted on the federal corporate return under Section
531 265(b) or 291(e), Internal Revenue Code;

532 (17) 100% of the dividends received from subsidiaries which are insurance companies
533 exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"
534 as defined by Subsection 59-7-101(7); and

535 ~~[(18) any amount included in unadjusted income that was derived from money paid by
536 the taxpayer to the program fund and investment income earned on those payments under Title
537 53B, Chapter 8a, Higher Education Savings Incentive Program, that is included in federal
538 taxable income, but only when the monies are used for qualified higher education costs of the
539 beneficiary.]~~

540 (18) subject to Subsection 59-7-105(12), the amount of a qualified investment as
541 defined in Section 53B-8a-102 that:

542 (a) a corporation that is an account owner as defined in Section 53B-8a-102 makes
543 during the taxable year;

544 (b) the corporation described in Subsection (18)(a) does not deduct on a federal
545 corporation income tax return; and

546 (c) does not exceed the maximum amount of the qualified investment that may be
547 subtracted from unadjusted income for a taxable year in accordance with Subsections
548 53B-8a-106(1)(d) and (f).

549 Section 14. Section **59-10-114** is amended to read:

550 **59-10-114. Additions to and subtractions from federal taxable income of an**
551 **individual.**

- 552 (1) There shall be added to federal taxable income of a resident or nonresident
553 individual:
- 554 (a) the amount of any income tax imposed by this or any predecessor Utah individual
555 income tax law and the amount of any income tax imposed by the laws of another state, the
556 District of Columbia, or a possession of the United States, to the extent deducted from adjusted
557 gross income in determining federal taxable income;
- 558 (b) a lump sum distribution that the taxpayer does not include in adjusted gross income
559 on the taxpayer's federal individual income tax return for the taxable year;
- 560 (c) for taxable years beginning on or after January 1, 2002, the amount of a child's
561 income calculated under Subsection (5) that:
- 562 (i) a parent elects to report on the parent's federal individual income tax return for the
563 taxable year; and
- 564 (ii) the parent does not include in adjusted gross income on the parent's federal
565 individual income tax return for the taxable year;
- 566 (d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue
567 Code;
- 568 (e) a withdrawal from a medical care savings account and any penalty imposed in the
569 taxable year if:
- 570 (i) the resident or nonresident individual did not deduct or include the amounts on the
571 resident or nonresident individual's federal individual income tax return pursuant to Section
572 220, Internal Revenue Code;
- 573 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and
- 574 (iii) the withdrawal is deducted by the resident or nonresident individual under
575 Subsection (2)(h);
- 576 (f) the amount ~~[disbursed to]~~ withdrawn under Title 53B, Chapter 8a, Higher
577 Education Savings Incentive Program, from the account of a resident or nonresident individual
578 who is an account owner [under Title 53B, Chapter 8a, Higher Education Savings Incentive
579 Program] as defined in Section 53B-8a-102, for the taxable year for which the amount is
580 [disbursed] withdrawn, if that amount [disbursed to] withdrawn from the account of the
581 resident or nonresident individual who is the account owner:
- 582 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and

- 583 (ii) is [~~deducted~~] subtracted by the resident or nonresident individual:
- 584 (A) who is the account owner [~~under~~]; and
- 585 (B) in accordance with Subsection (2)(i);
- 586 (g) except as provided in Subsection (6), for taxable years beginning on or after
- 587 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
- 588 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
- 589 one or more of the following entities:
- 590 (i) a state other than this state;
- 591 (ii) the District of Columbia;
- 592 (iii) a political subdivision of a state other than this state; or
- 593 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
- 594 (iii);
- 595 (h) subject to Subsection (2)(n), any distribution received by a resident beneficiary of a
- 596 resident trust of income that was taxed at the trust level for federal tax purposes, but was
- 597 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(c);
- 598 (i) any distribution received by a resident beneficiary of a nonresident trust of
- 599 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
- 600 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
- 601 was not taxed at the trust level by any state, with undistributed distributable net income
- 602 considered to be distributed from the most recently accumulated undistributed distributable net
- 603 income; and
- 604 (j) any adoption expense:
- 605 (i) for which a resident or nonresident individual receives reimbursement from another
- 606 person; and
- 607 (ii) to the extent to which the resident or nonresident individual deducts that adoption
- 608 expense:
- 609 (A) under Subsection (2)(c); or
- 610 (B) from federal taxable income on a federal individual income tax return.
- 611 (2) There shall be subtracted from federal taxable income of a resident or nonresident
- 612 individual:
- 613 (a) the interest or a dividend on obligations or securities of the United States and its

614 possessions or of any authority, commission, or instrumentality of the United States, to the
615 extent that interest or dividend is included in gross income for federal income tax purposes for
616 the taxable year but exempt from state income taxes under the laws of the United States, but
617 the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on
618 indebtedness incurred or continued to purchase or carry the obligations or securities described
619 in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend
620 income described in this Subsection (2)(a) to the extent that such expenses, including
621 amortizable bond premiums, are deductible in determining federal taxable income;

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

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

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

629 (A) paid; or

630 (B) incurred;

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

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

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

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

643 (f) 75% of the amount of the personal exemption, as defined and calculated in the
644 Internal Revenue Code, for each dependent child with a disability and adult with a disability

645 who is claimed as a dependent on a taxpayer's return;

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

648 (i) for:

649 (A) the taxpayer;

650 (B) the taxpayer's spouse; and

651 (C) the taxpayer's dependents; and

652 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
653 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

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

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

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

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

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

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

671 ~~[(i) the amount included in federal taxable income that was derived from money paid~~
672 ~~by an account owner to the program fund under Title 53B, Chapter 8a, Higher Education~~
673 ~~Savings Incentive Program, not to exceed amounts determined under Subsection~~
674 ~~53B-8a-106(1)(d), and investment income earned on account agreements entered into under~~
675 ~~Section 53B-8a-106 that is included in federal taxable income, but only when the funds are~~

676 ~~used for qualified higher education costs of the beneficiary;]~~

677 (i) subject to Subsection (1)(f), the amount of a qualified investment as defined in
678 Section 53B-8a-102 that:

679 (i) a resident or nonresident individual who is an account owner as defined in Section
680 53B-8a-102 makes during the taxable year;

681 (ii) the resident or nonresident individual described in Section (2)(i)(i) does not deduct
682 on a federal individual income return; and

683 (iii) does not exceed the maximum amount of the qualified investment that may be
684 subtracted from federal taxable income for a taxable year in accordance with Subsections
685 53B-8a-106(1)(e) and (f);

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

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

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

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

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

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

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

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

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

702 and

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

704 (2)(l)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the
705 Utah small business corporation that issued the qualifying stock; and

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

707 commission may make rules:

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

709 (B) for purposes of Subsection (2)(1)(i)(C), prescribing the circumstances under which

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

711 corporation;

712 (m) for the taxable year beginning on or after January 1, 2005, but beginning on or

713 before December 31, 2005, the first \$2,200 of income a qualifying military servicemember

714 receives:

715 (i) for service:

716 (A) as a qualifying military servicemember; or

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

718 (ii) to the extent that income is included in adjusted gross income on that resident or

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

720 (n) an amount received by a resident or nonresident individual or distribution received

721 by a resident or nonresident beneficiary of a resident trust:

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

723 (A) a state; or

724 (B) the District of Columbia; and

725 (ii) to the extent that amount or distribution is included in adjusted gross income for

726 that taxable year on the federal individual income tax return of the resident or nonresident

727 individual or resident or nonresident beneficiary of a resident trust;

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

729 (i) paid:

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

731 seq.;

732 (B) to a resident or nonresident individual; and

733 (C) for the taxable year; and

734 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on

735 that resident or nonresident individual's federal individual income tax return for that taxable

736 year; and

737 (p) an amount:

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

741 (A) federal law;
742 (B) a treaty; or
743 (C) a final decision issued by a court of competent jurisdiction.

744 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
745 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
746 \$4,800, except that:

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

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

753 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
754 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
755 reduced by 50 cents.

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

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

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

764 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
765 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

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

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

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

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

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

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

786 (i) may not:

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

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

789 subtraction described in Subsection (2)(k); or

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

791 (ii) shall:

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

793 (B) be in writing;

794 (C) be signed by:

795 (I) the governor; and

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

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

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

799 (c) (i) The governor shall report to the commission by no later than February 1 of each

800 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
801 in effect.

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

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

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

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

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

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

814 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
815 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
816 2000 Form 8814 if for purposes of federal individual income taxes the information contained
817 on 2000 Form 8814 is reported on a form other than Form 8814; and

818 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
819 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
820 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
821 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
822 8814.

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

825 (i) the lesser of:

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

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

828 (I) the child's taxable interest;

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

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

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

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

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

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

842 (i) the entity; or

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

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

845 Section 15. Section **59-10-202** is amended to read:

846 **59-10-202. Additions to and subtractions from federal taxable income of a**
847 **resident or nonresident estate or trust.**

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

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

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

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

- 862 (i) a state other than this state;
- 863 (ii) the District of Columbia;
- 864 (iii) a political subdivision of a state other than this state; or
- 865 (iv) an agency or instrumentality of an entity described in Subsections (1)(c)(i) through
- 866 (iii);
- 867 (d) any portion of federal taxable income for a taxable year if that federal taxable
- 868 income is derived from stock:
- 869 (i) in an S corporation; and
- 870 (ii) that is held by an electing small business trust; [~~and~~]
- 871 (e) (i) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
- 872 Incentive Program, from the account of a resident or nonresident estate or trust that is an
- 873 account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is
- 874 withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or
- 875 trust that is the account owner:
- 876 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and
- 877 (B) is subtracted by the resident or nonresident estate or trust:
- 878 (I) that is the account owner; and
- 879 (II) in accordance with Subsection (2)(j)(i); and
- 880 (ii) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
- 881 Incentive Program, from the account of a resident or nonresident estate or trust that is an
- 882 account owner as defined in Section 53B-8a-102, for the taxable year beginning on or after
- 883 January 1, 2007, but beginning on or before December 31, 2007, if that amount withdrawn
- 884 from the account of the resident or nonresident estate or trust that is the account owner:
- 885 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and
- 886 (B) is subtracted by the resident or nonresident estate or trust:
- 887 (I) that is the account owner; and
- 888 (II) in accordance with Subsection (2)(j)(ii); and
- 889 [~~e~~] (f) any fiduciary adjustments required by Section 59-10-210.
- 890 (2) There shall be subtracted from federal taxable income of a resident or nonresident
- 891 estate or trust:
- 892 (a) the interest or a dividend on obligations or securities of the United States and its

893 possessions or of any authority, commission, or instrumentality of the United States, to the
894 extent that interest or dividend is included in gross income for federal income tax purposes for
895 the taxable year but exempt from state income taxes under the laws of the United States, but
896 the amount subtracted under this Subsection (2) shall be reduced by any interest on
897 indebtedness incurred or continued to purchase or carry the obligations or securities described
898 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
899 income described in this Subsection (2) to the extent that such expenses, including amortizable
900 bond premiums, are deductible in determining federal taxable income;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

931 and

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

933 (2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in

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

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

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

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

939 a resident or nonresident estate or trust has an ownership interest in a Utah small business

940 corporation;

941 (f) for the taxable year beginning on or after January 1, 2005, but beginning on or
942 before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or
943 trust that is derived from a deceased qualifying military servicemember:

944 (i) for service:

945 (A) as a qualifying military servicemember; or

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

947 (ii) to the extent that income is included in total income on that resident or nonresident
948 estate's or trust's federal income tax return for estates and trusts for that taxable year;

949 (g) any amount:

950 (i) received by a resident or nonresident estate or trust;

951 (ii) that constitutes a refund of taxes imposed by:

952 (A) a state; or

953 (B) the District of Columbia; and

954 (iii) to the extent that amount is included in total income on that resident or nonresident

955 estate's or trust's federal tax return for estates and trusts for that taxable year;

956 (h) the amount of a railroad retirement benefit:

957 (i) paid:

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

959 seq.;

960 (B) to a resident or nonresident estate or trust derived from a deceased resident or

961 nonresident individual; and

962 (C) for the taxable year; and

963 (ii) to the extent that railroad retirement benefit is included in total income on that

964 resident or nonresident estate's or trust's federal tax return for estates and trusts;

965 (i) an amount:

966 (i) received by a resident or nonresident estate or trust if that amount is derived from a

967 deceased enrolled member of an American Indian tribe; and

968 (ii) to the extent that the state is not authorized or permitted to impose a tax under this

969 part on that amount in accordance with:

970 (A) federal law;

971 (B) a treaty; or

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

973 (j) (i) subject to Subsection (1)(e)(i), for taxable years beginning on or after January 1,

974 2007, the amount of a qualified investment as defined in Section 53B-8a-102 that:

975 (A) a resident or nonresident estate or trust that is an account owner as defined in

976 Section 53B-8a-102 makes during the taxable year;

977 (B) the resident or nonresident estate or trust described in Subsection (2)(j)(i)(A) does

978 not deduct on a federal tax return for estates and trusts; and

979 (C) does not exceed the maximum amount of the qualified investment that may be

980 subtracted from federal taxable income for a taxable year in accordance with Subsections

981 53B-8a-106(1)(e) and (f); and

982 (ii) subject to Subsection (1)(e)(ii), for the taxable year beginning on or after January 1,

983 2007, but beginning on or before December 31, 2007 only, and in addition to any subtraction a

984 resident or nonresident estate or trust that is an account owner as defined in Section

985 53B-8a-102 makes in accordance with Subsection (2)(j)(i), the amount of a qualified

986 investment as defined in Section 53B-8a-102 that:

987 (A) a resident or nonresident estate or trust that is an account owner as defined in
988 Section 53B-8a-102 could have subtracted under Subsection (2)(j)(i) for the taxable year
989 beginning on or after January 1, 2006, but beginning on or before December 31, 2006, had the
990 subtraction under Subsection (2)(j)(i) been in effect for the taxable year beginning on or after
991 January 1, 2006, but beginning on or before December 31, 2006;

992 (B) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A)
993 makes during the taxable year beginning on or after January 1, 2006, but beginning on or
994 before December 31, 2006;

995 (C) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A) does
996 not deduct on a federal tax return for estates and trusts; and

997 (D) does not exceed the maximum amount of the qualified investment that may be
998 subtracted from federal taxable income:

999 (I) for the taxable year beginning on or after January 1, 2006, but beginning on or
1000 before December 31, 2006; and

1001 (II) in accordance with Subsections 53B-8a-106(1)(e) and (f); and

1002 [(j)] (k) any fiduciary adjustments required by Section 59-10-210.

1003 (3) Notwithstanding Subsection (1)(c), interest from bonds, notes, and other evidences
1004 of indebtedness issued by an entity described in Subsections (1)(c)(i) through (iv) may not be
1005 added to federal taxable income of a resident or nonresident estate or trust if, as annually
1006 determined by the commission:

1007 (a) for an entity described in Subsection (1)(c)(i) or (ii), the entity and all of the
1008 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
1009 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

1010 (b) for an entity described in Subsection (1)(c)(iii) or (iv), the following do not impose
1011 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
1012 this state:

1013 (i) the entity; or

1014 (ii) (A) the state in which the entity is located; or

1015 (B) the District of Columbia, if the entity is located within the District of Columbia.

1016 (4) (a) A subtraction for an amount described in Subsection (2)(d) is allowed only if:

1017 (i) the income is derived from a deceased Ute tribal member; and
1018 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
1019 requirements of this Subsection (4).
1020 (b) The agreement described in Subsection (4)(a):
1021 (i) may not:
1022 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
1023 (B) provide a subtraction under this section greater than or different from the
1024 subtraction described in Subsection (2)(d); or
1025 (C) affect the power of the state to establish rates of taxation; and
1026 (ii) shall:
1027 (A) provide for the implementation of the subtraction described in Subsection (2)(d);
1028 (B) be in writing;
1029 (C) be signed by:
1030 (I) the governor; and
1031 (II) the chair of the Business Committee of the Ute tribe;
1032 (D) be conditioned on obtaining any approval required by federal law; and
1033 (E) state the effective date of the agreement.
1034 (c) (i) The governor shall report to the commission by no later than February 1 of each
1035 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
1036 in effect.
1037 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
1038 subtraction permitted under Subsection (2)(d) is not allowed for taxable years beginning on or
1039 after the January 1 following the termination of the agreement.
1040 (d) For purposes of Subsection (2)(d) and in accordance with Title 63, Chapter 46a,
1041 Utah Administrative Rulemaking Act, the commission may make rules:
1042 (i) for determining whether income is derived from a source within the Uintah and
1043 Ouray Reservation; and
1044 (ii) that are substantially similar to how adjusted gross income derived from Utah
1045 sources is determined under Section 59-10-117.
1046 Section 16. **Retrospective operation.**
1047 This bill has retrospective operation for taxable years beginning on or after January 1,

1048 2007.

Fiscal Note

**H.B. 36 1st Sub. (Buff) - Income Tax Additions and Subtractions for Higher
Education Savings**
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 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 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.
