

**Senator Wayne L. Niederhauser** proposes the following substitute bill:

**INCOME TAX ADDITIONS, SUBTRACTIONS, AND**

**CREDITS FOR HIGHER EDUCATION**

**SAVINGS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Fred R. Hunsaker**

Senate Sponsor: Wayne L. Niederhauser

Cosponsor: Sheryl L. Allen

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**LONG TITLE**

**General Description:**

This bill amends the Higher Education Savings Incentive Program chapter, the Corporate Franchise and Income Taxes chapter, and the Individual Income Tax Act relating the program for higher education savings, additions to and subtractions from income for higher education savings, and to provide a tax credit for higher education savings.

**Highlighted Provisions:**

This bill:

- ▶ provides and modifies definitions;
- ▶ addresses the taxation of the Utah Educational Savings Plan Trust and its income;
- ▶ addresses the maximum amount of a qualified investment in the Utah Educational

Savings Plan Trust that a person, estate, or trust may:

- subtract from income; or
- use as the basis for claiming a tax credit;



- 25           ▶ modifies and clarifies the amount of a qualified investment in the Utah Educational
- 26 Savings Plan Trust that a corporation or a resident or nonresident individual may
- 27 subtract from income;
- 28           ▶ modifies an addition to income for a corporation or a resident or nonresident
- 29 individual who is an account owner under the Utah Educational Savings Plan Trust
- 30 for amounts not expended for higher education costs under certain circumstances;
- 31           ▶ provides that a resident or nonresident estate or trust may subtract certain qualified
- 32 investments in the Utah Educational Savings Plan Trust from income;
- 33           ▶ requires a resident or nonresident estate or trust that is an account owner under the
- 34 Utah Educational Savings Plan Trust to add to income amounts not expended for
- 35 higher education costs under certain circumstances;
- 36           ▶ allows a tax credit under the Single Rate Individual Income Tax Act for qualified
- 37 investments in the Utah Educational Savings Plan Trust; and
- 38           ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40           None

41 **Other Special Clauses:**

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

43 2007.

44           This bill coordinates with S.B. 223, Tax Amendments, by merging substantive

45 amendments.

46 **Utah Code Sections Affected:**

47 AMENDS:

- 48           **53B-8a-102**, as last amended by Chapter 109, Laws of Utah 2005
- 49           **53B-8a-103**, as last amended by Chapter 109, Laws of Utah 2005
- 50           **53B-8a-104**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 51           **53B-8a-105**, as last amended by Chapter 109, Laws of Utah 2005
- 52           **53B-8a-106**, as last amended by Chapter 223, Laws of Utah 2006
- 53           **53B-8a-107**, as last amended by Chapter 109, Laws of Utah 2005
- 54           **53B-8a-108**, as last amended by Chapter 109, Laws of Utah 2005
- 55           **53B-8a-109**, as last amended by Chapter 109, Laws of Utah 2005

- 56           **53B-8a-111**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 57           **53B-8a-112**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 58           **53B-8a-113**, as last amended by Chapter 109, Laws of Utah 2005
- 59           **59-7-105**, as last amended by Chapter 109, Laws of Utah 2005
- 60           **59-7-106**, as last amended by Chapter 211, Laws of Utah 2002
- 61           **59-10-114**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session
- 62           **59-10-201**, as last amended by Chapter 223, Laws of Utah 2006
- 63           **59-10-202**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session
- 64           **59-10-1202**, as enacted by Chapter 2, Laws of Utah 2006, Fourth Special Session
- 65           **59-10-1203**, as enacted by Chapter 2, Laws of Utah 2006, Fourth Special Session

66 ENACTS:

- 67           **59-10-1206.1**, Utah Code Annotated 1953
- 68           **59-10-1206.9**, Utah Code Annotated 1953



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

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

72           **53B-8a-102. Definitions.**

73           As used in this chapter:

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

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

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

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

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

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

90 (7) "Endowment fund" means the endowment fund established under Section  
91 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan Trust.

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

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

100 (10) "Program administrator" means the administrator of the Utah Educational Savings  
101 Plan Trust appointed by the board to administer and manage the Utah Educational Savings Plan  
102 Trust.

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

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

107 [~~(12)~~] (13) "Tuition and fees" means the quarterly or semester charges imposed to  
108 attend an institution of higher education and required as a condition of enrollment.

109 [~~(13)~~] (14) "Utah Educational Savings Plan Trust" [~~or "trust"~~] means the Utah  
110 Educational Savings Plan Trust created under Section 53B-8a-103.

111 [~~(14)~~] (15) "Vested account" means an account agreement which has been in full force  
112 and effect during eight continuous years of residency of the beneficiary in the state while  
113 participating in the Utah Educational Savings Plan Trust.

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

115 **53B-8a-103. Creation of Utah Educational Savings Plan Trust.**

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

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

- 118 (3) The board, in the capacity of trustee, may:
- 119 (a) exercise any authority granted by law to the Board of Regents;
- 120 (b) make and enter into contracts necessary for the administration of the Utah
- 121 Educational Savings Plan Trust created under this chapter;
- 122 (c) adopt a corporate seal and change and amend it from time to time;
- 123 (d) invest moneys within the program fund:
- 124 (i) (A) in any investments that are determined by the board to be appropriate and are
- 125 approved by the state treasurer; or
- 126 (B) in mutual funds registered under the Investment Company Act of 1940, consistent
- 127 with the best interests of a designated beneficiary's higher education funding needs; and
- 128 (ii) are in compliance with rules of the State Money Management Council applicable to
- 129 gift funds;
- 130 (e) invest moneys within the endowment fund in any investments that are:
- 131 (i) determined by the board to be appropriate;
- 132 (ii) approved by the state treasurer; and
- 133 (iii) in compliance with rules of the State Money Management Council applicable to
- 134 gift funds;
- 135 (f) enter into agreements with any institution of higher education, any federal or state
- 136 agency, or other entity as required to implement this chapter;
- 137 (g) accept any grants, gifts, legislative appropriations, and other moneys from the state,
- 138 any unit of federal, state, or local government, or any other person, firm, partnership, or
- 139 corporation for deposit to the administrative fund, endowment fund, or the program fund;
- 140 (h) enter into account agreements with account owners;
- 141 (i) make payments to institutions of higher education pursuant to account agreements
- 142 on behalf of beneficiaries;
- 143 (j) make refunds to account owners upon the termination of account agreements
- 144 pursuant to the provisions of this chapter;
- 145 (k) appoint a program administrator and determine the duties of the program
- 146 administrator and other staff as necessary and fix their compensation;
- 147 (l) make provision for the payment of costs of administration and operation of the Utah
- 148 Educational Savings Plan Trust; and

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

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

152 **53B-8a-104. Office facilities, clerical, and administrative support for the Utah**  
153 **Educational Savings Plan Trust.**

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

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

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

159 **53B-8a-105. Additional powers of board as to the Utah Educational Savings Plan**  
160 **Trust.**

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

164 (1) engage:

165 (a) one or more investment advisors, registered under the Investment Advisors Act of  
166 1940, with at least 5,000 advisory clients and at least \$1,000,000,000 under management, to  
167 provide investment advice to the board with respect to the assets held in each account;

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

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

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

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

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

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

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

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

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

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

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

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

197 **53B-8a-106. Account agreements.**

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

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

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

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

209 (d) Subject to Subsection (1)(f), the maximum amount of a qualified investment that a  
210 corporation that is an account owner may subtract from unadjusted income for a taxable year in

211 accordance with Title 59, Chapter 7, Corporate Franchise and Income Taxes, is \$1,560 for each  
212 individual beneficiary for the taxable year beginning on or after January 1, 2006, but beginning  
213 on or before December 31, 2006.

214 ~~[(d) The]~~ (e) Subject to Subsection (1)(f), the maximum amount of [investments] a  
215 qualified investment that may be subtracted from federal taxable income [of a resident or  
216 nonresident individual under Subsection 59-10-114(2)(i) shall be \$1,510] of a resident or  
217 nonresident individual for a taxable year in accordance with Section 59-10-114, a resident or  
218 nonresident estate or trust for a taxable year in accordance with Section 59-10-202, or used as  
219 the basis for claiming a tax credit for a taxable year by a resident or nonresident individual in  
220 accordance with Section 59-10-1206.1, is:

221 (i) for a resident or nonresident estate or trust that is an account owner, \$1,560 for each  
222 individual beneficiary for the [2005 calendar year and an amount adjusted annually thereafter  
223 to reflect increases in the Consumer Price Index.] taxable year beginning on or after January 1,  
224 2006, but beginning on or before December 31, 2006;

225 (ii) for a resident or nonresident individual that is an account owner, other than a  
226 husband and wife who are account owners and file a single return jointly, \$1,560 for each  
227 individual beneficiary for the taxable year beginning on or after January 1, 2006, but beginning  
228 on or before December 31, 2006; or

229 (iii) for a husband and wife who are account owners and file a single return jointly,  
230 \$3,120 for each individual beneficiary:

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

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

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

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

236 (f) (i) For taxable years beginning on or after January 1, 2007, the program  
237 administrator shall increase or decrease the maximum amount of a qualified investment  
238 described in Subsections (1)(d) and (1)(e)(i) and (ii), by a percentage equal to the percentage  
239 difference between the consumer price index for the preceding calendar year and the consumer  
240 price index for the calendar year 2005.

241 (ii) After making an increase or decrease required by Subsection (1)(f)(i), the program



242 administrator shall:

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

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

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

251 (II) two.

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

255 (2) (a) (i) Beneficiaries designated in account agreements must be designated after  
256 birth and before age 19 for ~~[the participant]~~ an account owner to:

257 (A) subtract [allowable investments] a qualified investment from [federal taxable]  
258 income under [~~Subsection 59-10-114(2)(i):~~];

259 (I) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

260 (II) Section 59-10-114; or

261 (III) Section 59-10-202; or

262 (B) use a qualified investment as the basis for claiming a tax credit in accordance with  
263 Section 59-10-1206.1.

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

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

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

272 (3) Each account agreement shall state clearly that there are no guarantees regarding

273 moneys in the Utah Educational Savings Plan Trust as to the return of principal and that losses  
274 could occur.

275 (4) Each account agreement shall provide that:

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

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

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

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

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

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

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

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

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

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

297 (8) Each account agreement shall provide that:

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

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

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

304           **53B-8a-107. Program, endowment, and administrative funds -- Investment and**  
305 **payments from funds.**

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

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

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

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

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

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

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

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

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

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

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

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

352 (3) Beginning on April 1, 2005:

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

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

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

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

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

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

367 **53B-8a-108. Cancellation of agreements.**

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

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

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

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

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

376 (a) the death of the beneficiary; or

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

378 (4) The board shall make rules for the disposition of monies transferred to an account  
379 pursuant to Subsection [~~53A-8a-107~~] 53B-8a-107(2)(c)(ii) and the earnings on those monies  
380 when an account agreement is cancelled.

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

382 **53B-8a-109. Repayment and ownership of payments and investment income --**  
383 **Transfer of ownership rights.**

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

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

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

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

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

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

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

397           **53B-8a-111. Annual audited financial report to governor, Legislature, and state**  
398 **auditor.**

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

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

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

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

409           (b) a summary of the benefits provided by the Utah Educational Savings Plan Trust  
410 including the number of participants and beneficiaries in the Utah Educational Savings Plan  
411 Trust; and

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

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

415           **53B-8a-112. Tax considerations.**

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

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

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

422           **53B-8a-113. Property rights to assets in Utah Educational Savings Plan Trust.**

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

427           (2) No property rights in the Utah Educational Savings Plan Trust shall exist in favor

428 of the state.

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

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

432 **59-7-105. Additions to unadjusted income.**

433 In computing adjusted income the following amounts shall be added to unadjusted  
434 income:

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

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

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

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

444 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and  
445 (2)(a);

446 (4) capital losses that have been deducted on a Utah corporate return in previous years;

447 (5) any deduction on the federal return that has been previously deducted on the Utah  
448 return;

449 (6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;

450 (7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated  
451 technological equipment;

452 (8) charitable contributions, to the extent deducted on the federal return when  
453 determining federal taxable income;

454 (9) the amount of gain or loss determined under Section 59-7-114 relating to a target  
455 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already  
456 been included in the unadjusted income of the target corporation;

457 (10) the amount of gain or loss determined under Section 59-7-115 relating to  
458 corporations treated for federal purposes as having disposed of its assets under Section 336(e),

459 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted  
460 income of the target corporation;

461 (11) adjustments to gains, losses, depreciation expense, amortization expense, and  
462 similar items due to a difference between basis for federal purposes and basis as computed  
463 under Section 59-7-107; and

464 (12) the amount [~~disbursed to~~] withdrawn under Title 53B, Chapter 8a, Higher  
465 Education Savings Incentive Program, from the account of a corporation that is an account  
466 owner [under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, to the  
467 extent deducted on a Utah return in previous years and not used for qualified higher education  
468 costs of the beneficiary, in the year in which the amount is disbursed.] as defined in Section  
469 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn  
470 from the account of the corporation that is the account owner:

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

472 (b) is subtracted by the corporation:

473 (i) that is the account owner; and

474 (ii) in accordance with Subsection 59-7-106(18).

475 Section 13. Section **59-7-106** is amended to read:

476 **59-7-106. Subtractions from unadjusted income.**

477 In computing adjusted income the following amounts shall be subtracted from  
478 unadjusted income:

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

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

484 For the purposes of this Subsection all capital losses in a given year must be:

485 (a) deducted in the year incurred; or

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

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



490 (4) the decrease in qualified research and basic research expense deduction for federal  
491 income tax purposes due to claiming the federal research and development credit under Section  
492 41, Internal Revenue Code;

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

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

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

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

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

507 (10) charitable contributions, to the extent allowed as a subtraction under Section  
508 59-7-109;

509 (11) (a) 50% of the dividends deemed received or received from subsidiaries which are  
510 members of the unitary group and are organized or incorporated outside of the United States  
511 unless such subsidiaries are included in a combined report under Section 59-7-402 or 59-7-403.

512 In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the  
513 dividends deemed received or received, the expense directly attributable to those dividends.  
514 Interest expense attributable to excluded dividends shall be determined by multiplying interest  
515 expense by a fraction, the numerator of which is the taxpayer's average investment in such  
516 dividend paying subsidiaries, and the denominator of which is the taxpayer's average total  
517 investment in assets;

518 (b) in determining income apportionable to this state, a portion of the factors of a  
519 foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be  
520 included in the combined report factors. The portion to be included shall be determined by

521 multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the  
522 numerator of which is the amount of the dividend paid by the foreign subsidiary which is  
523 included in adjusted income, and the denominator of which is the current year earnings and  
524 profits of the foreign subsidiary as determined under the Internal Revenue Code;

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

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

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

537 (14) the amount of gain or loss which is included in unadjusted income but not  
538 recognized for federal purposes on stock sold, exchanged, or distributed by a corporation  
539 pursuant to Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal  
540 Revenue Code, has been made for federal purposes;

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

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

547 (16) any interest expense not deducted on the federal corporate return under Section  
548 265(b) or 291(e), Internal Revenue Code;

549 (17) 100% of the dividends received from subsidiaries which are insurance companies  
550 exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"  
551 as defined by Subsection 59-7-101(7); and

552 ~~[(18) any amount included in unadjusted income that was derived from money paid by~~  
553 ~~the taxpayer to the program fund and investment income earned on those payments under Title~~  
554 ~~53B, Chapter 8a, Higher Education Savings Incentive Program, that is included in federal~~  
555 ~~taxable income, but only when the monies are used for qualified higher education costs of the~~  
556 ~~beneficiary.]~~

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

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

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

563 (c) does not exceed the maximum amount of the qualified investment that may be  
564 subtracted from unadjusted income for a taxable year in accordance with Subsections  
565 53B-8a-106(1)(d) and (f).

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

567 **59-10-114. Additions to and subtractions from federal taxable income of an**  
568 **individual.**

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

571 (a) the amount of any income tax imposed by this or any predecessor Utah individual  
572 income tax law and the amount of any income tax imposed by the laws of another state, the  
573 District of Columbia, or a possession of the United States, to the extent deducted from adjusted  
574 gross income in determining federal taxable income;

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

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

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

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

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

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

587 (i) the resident or nonresident individual did not deduct or include the amounts on the  
588 resident or nonresident individual's federal individual income tax return pursuant to Section  
589 220, Internal Revenue Code;

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

591 (iii) the withdrawal is deducted by the resident or nonresident individual under  
592 Subsection (2)(h);

593 (f) the amount ~~[disbursed to]~~ withdrawn under Title 53B, Chapter 8a, Higher  
594 Education Savings Incentive Program, from the account of a resident or nonresident individual  
595 who is an account owner [under Title 53B, Chapter 8a, Higher Education Savings Incentive  
596 Program] as defined in Section 53B-8a-102, for the taxable year for which the amount is  
597 [disbursed] withdrawn, if that amount [disbursed to] withdrawn from the account of the  
598 resident or nonresident individual who is the account owner:

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

600 (ii) is ~~[deducted]~~;

601 (A) subtracted by the resident or nonresident individual:

602 (I) who is the account owner [under]; and

603 (II) in accordance with Subsection (2)(i); or

604 (B) used as the basis for the resident or nonresident individual who is the account  
605 owner to claim a tax credit under Section 59-10-1206.1;

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

610 (i) a state other than this state;

611 (ii) the District of Columbia;

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

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

614 (iii);

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

618 (i) any distribution received by a resident beneficiary of a nonresident trust of  
619 undistributed distributable net income realized by the trust on or after January 1, 2004, if that  
620 undistributed distributable net income was taxed at the trust level for federal tax purposes, but  
621 was not taxed at the trust level by any state, with undistributed distributable net income  
622 considered to be distributed from the most recently accumulated undistributed distributable net  
623 income; and

624 (j) any adoption expense:

625 (i) for which a resident or nonresident individual receives reimbursement from another  
626 person; and

627 (ii) to the extent to which the resident or nonresident individual deducts that adoption  
628 expense:

629 (A) under Subsection (2)(c); or

630 (B) from federal taxable income on a federal individual income tax return.

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

633 (a) the interest or a dividend on obligations or securities of the United States and its  
634 possessions or of any authority, commission, or instrumentality of the United States, to the  
635 extent that interest or dividend is included in gross income for federal income tax purposes for  
636 the taxable year but exempt from state income taxes under the laws of the United States, but  
637 the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on  
638 indebtedness incurred or continued to purchase or carry the obligations or securities described  
639 in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend  
640 income described in this Subsection (2)(a) to the extent that such expenses, including  
641 amortizable bond premiums, are deductible in determining federal taxable income;

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

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

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

649 (A) paid; or

650 (B) incurred;

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

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

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

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

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

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

668 (i) for:

669 (A) the taxpayer;

670 (B) the taxpayer's spouse; and

671 (C) the taxpayer's dependents; and

672 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or  
673 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

674 (h) (i) except as provided in this Subsection (2)(h), the amount of a contribution made  
675 during the taxable year on behalf of the taxpayer to a medical care savings account and interest

676 earned on a contribution to a medical care savings account established pursuant to Title 31A,  
677 Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by  
678 the account administrator as provided in the Medical Care Savings Account Act, and if the  
679 taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax  
680 return pursuant to Section 220, Internal Revenue Code; and

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

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

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

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

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

691 ~~[(i) the amount included in federal taxable income that was derived from money paid  
692 by an account owner to the program fund under Title 53B, Chapter 8a, Higher Education  
693 Savings Incentive Program, not to exceed amounts determined under Subsection  
694 53B-8a-106(1)(d), and investment income earned on account agreements entered into under  
695 Section 53B-8a-106 that is included in federal taxable income, but only when the funds are  
696 used for qualified higher education costs of the beneficiary;]~~

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

699 (i) a resident or nonresident individual who is an account owner as defined in Section  
700 53B-8a-102 makes during the taxable year;

701 (ii) the resident or nonresident individual described in Subsection (2)(i)(i) does not  
702 deduct on a federal individual income tax return; and

703 (iii) does not exceed the maximum amount of the qualified investment that may be  
704 subtracted from federal taxable income for a taxable year in accordance with Subsections  
705 53B-8a-106(1)(e) and (f);

706 (j) for taxable years beginning on or after January 1, 2000, any amounts paid for

707 premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the  
708 amounts paid for long-term care insurance were not deducted under Section 213, Internal  
709 Revenue Code, in determining federal taxable income;

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

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

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

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

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

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

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

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

722 and

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

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

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

729 (B) for purposes of Subsection (2)(l)(i)(C), prescribing the circumstances under which  
730 a resident or nonresident individual has an ownership interest in a Utah small business  
731 corporation;

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

735 (i) for service:

736 (A) as a qualifying military servicemember; or

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



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

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

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

743 (A) a state; or

744 (B) the District of Columbia; and

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

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

749 (i) paid:

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

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

753 (C) for the taxable year; and

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

757 (p) an amount:

758 (i) received by an enrolled member of an American Indian tribe; and

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

761 (A) federal law;

762 (B) a treaty; or

763 (C) a final decision issued by a court of competent jurisdiction.

764 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted  
765 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or  
766 \$4,800, except that:

767 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income  
768 earned over \$32,000, the amount of the retirement income exemption that may be subtracted

769 shall be reduced by 50 cents;

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

773 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
774 \$25,000, the amount of the retirement income exemption that may be subtracted shall be  
775 reduced by 50 cents.

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

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

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

784 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
785 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

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

799 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded

800 in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

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

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

803 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the

804 requirements of this Subsection (4).

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

806 (i) may not:

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

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

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

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

811 (ii) shall:

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

813 (B) be in writing;

814 (C) be signed by:

815 (I) the governor; and

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

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

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

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

820 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is

821 in effect.

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

823 subtraction permitted under Subsection (2)(k) is not allowed for taxable years beginning on or

824 after the January 1 following the termination of the agreement.

825 (d) For purposes of Subsection (2)(k) and in accordance with Title 63, Chapter 46a,

826 Utah Administrative Rulemaking Act, the commission may make rules:

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

828 Ouray Reservation; and

829 (ii) that are substantially similar to how adjusted gross income derived from Utah

830 sources is determined under Section 59-10-117.

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

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

834 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by  
835 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to  
836 2000 Form 8814 if for purposes of federal individual income taxes the information contained  
837 on 2000 Form 8814 is reported on a form other than Form 8814; and

838 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter  
839 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form  
840 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income  
841 taxes the information contained on 2000 Form 8814 is reported on a form other than Form  
842 8814.

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

845 (i) the lesser of:

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

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

848 (I) the child's taxable interest;

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

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

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

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

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

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

- 862 (i) the entity; or  
863 (ii) (A) the state in which the entity is located; or  
864 (B) the District of Columbia, if the entity is located within the District of Columbia.

865 Section 15. Section **59-10-201** is amended to read:

866 **59-10-201. Taxation of resident trusts and estates.**

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

870 (2) A resident estate or trust shall be allowed the credit provided in Section  
871 59-10-1003, relating to an income tax imposed by another state, except that the limitation shall  
872 be computed by reference to the taxable income of the estate or trust.

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

876 Section 16. Section **59-10-202** is amended to read:

877 **59-10-202. Additions to and subtractions from federal taxable income of a**  
878 **resident or nonresident estate or trust.**

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

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

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

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

- 893 (i) a state other than this state;
- 894 (ii) the District of Columbia;
- 895 (iii) a political subdivision of a state other than this state; or
- 896 (iv) an agency or instrumentality of an entity described in Subsections (1)(c)(i) through
- 897 (iii);
- 898 (d) any portion of federal taxable income for a taxable year if that federal taxable
- 899 income is derived from stock:
  - 900 (i) in an S corporation; and
  - 901 (ii) that is held by an electing small business trust; [~~and~~]
  - 902 (e) (i) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
  - 903 Incentive Program, from the account of a resident or nonresident estate or trust that is an
  - 904 account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is
  - 905 withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or
  - 906 trust that is the account owner:
    - 907 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and
    - 908 (B) is subtracted by the resident or nonresident estate or trust:
      - 909 (I) that is the account owner; and
      - 910 (II) in accordance with Subsection (2)(j)(i); and
      - 911 (ii) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
      - 912 Incentive Program, from the account of a resident or nonresident estate or trust that is an
      - 913 account owner as defined in Section 53B-8a-102, for the taxable year beginning on or after
      - 914 January 1, 2007, but beginning on or before December 31, 2007, if that amount withdrawn
      - 915 from the account of the resident or nonresident estate or trust that is the account owner:
        - 916 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and
        - 917 (B) is subtracted by the resident or nonresident estate or trust:
          - 918 (I) that is the account owner; and
          - 919 (II) in accordance with Subsection (2)(j)(ii); and
    - 920 [~~e~~] (f) any fiduciary adjustments required by Section 59-10-210.
    - 921 (2) There shall be subtracted from federal taxable income of a resident or nonresident
    - 922 estate or trust:
      - 923 (a) the interest or a dividend on obligations or securities of the United States and its

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

962 and

963 (C) if, prior to the purchase of the qualifying stock described in Subsection  
964 (2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in  
965 the Utah small business corporation that issued the qualifying stock; and

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

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

969 (B) for purposes of Subsection (2)(e)(i)(C), prescribing the circumstances under which  
970 a resident or nonresident estate or trust has an ownership interest in a Utah small business  
971 corporation;

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

975 (i) for service:

976 (A) as a qualifying military servicemember; or

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

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

980 (g) any amount:

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

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

983 (A) a state; or

984 (B) the District of Columbia; and

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



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

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

988 (i) paid:

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

990 seq.;

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

992 nonresident individual; and

993 (C) for the taxable year; and

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

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

996 (i) an amount:

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

998 deceased enrolled member of an American Indian tribe; and

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

1000 part on that amount in accordance with:

1001 (A) federal law;

1002 (B) a treaty; or

1003 (C) a final decision issued by a court of competent jurisdiction; ~~and~~

1004 (j) (i) subject to Subsection (1)(e)(i), for taxable years beginning on or after January 1,

1005 2007, the amount of a qualified investment as defined in Section 53B-8a-102 that:

1006 (A) a resident or nonresident estate or trust that is an account owner as defined in

1007 Section 53B-8a-102 makes during the taxable year;

1008 (B) the resident or nonresident estate or trust described in Subsection (2)(j)(i)(A) does

1009 not deduct on a federal tax return for estates and trusts; and

1010 (C) does not exceed the maximum amount of the qualified investment that may be

1011 subtracted from federal taxable income for a taxable year in accordance with Subsections

1012 53B-8a-106(1)(e) and (f); and

1013 (ii) subject to Subsection (1)(e)(ii), for the taxable year beginning on or after January 1,

1014 2007, but beginning on or before December 31, 2007 only, and in addition to any subtraction a

1015 resident or nonresident estate or trust that is an account owner as defined in Section

1016 53B-8a-102 makes in accordance with Subsection (2)(j)(i), the amount of a qualified

1017 investment as defined in Section 53B-8a-102 that:

1018 (A) a resident or nonresident estate or trust that is an account owner as defined in  
1019 Section 53B-8a-102 could have subtracted under Subsection (2)(j)(i) for the taxable year  
1020 beginning on or after January 1, 2006, but beginning on or before December 31, 2006, had the  
1021 subtraction under Subsection (2)(j)(i) been in effect for the taxable year beginning on or after  
1022 January 1, 2006, but beginning on or before December 31, 2006;

1023 (B) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A)  
1024 makes during the taxable year beginning on or after January 1, 2006, but beginning on or  
1025 before December 31, 2006;

1026 (C) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A) does  
1027 not deduct on a federal tax return for estates and trusts; and

1028 (D) does not exceed the maximum amount of the qualified investment that may be  
1029 subtracted from federal taxable income:

1030 (I) for the taxable year beginning on or after January 1, 2006, but beginning on or  
1031 before December 31, 2006; and

1032 (II) in accordance with Subsections 53B-8a-106(1)(e) and (f); and

1033 [(j)] (k) any fiduciary adjustments required by Section 59-10-210.

1034 (3) Notwithstanding Subsection (1)(c), interest from bonds, notes, and other evidences  
1035 of indebtedness issued by an entity described in Subsections (1)(c)(i) through (iv) may not be  
1036 added to federal taxable income of a resident or nonresident estate or trust if, as annually  
1037 determined by the commission:

1038 (a) for an entity described in Subsection (1)(c)(i) or (ii), the entity and all of the  
1039 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
1040 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

1041 (b) for an entity described in Subsection (1)(c)(iii) or (iv), the following do not impose  
1042 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of  
1043 this state:

1044 (i) the entity; or

1045 (ii) (A) the state in which the entity is located; or

1046 (B) the District of Columbia, if the entity is located within the District of Columbia.

1047 (4) (a) A subtraction for an amount described in Subsection (2)(d) is allowed only if:

1048 (i) the income is derived from a deceased Ute tribal member; and  
1049 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the  
1050 requirements of this Subsection (4).

1051 (b) The agreement described in Subsection (4)(a):  
1052 (i) may not:  
1053 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;  
1054 (B) provide a subtraction under this section greater than or different from the  
1055 subtraction described in Subsection (2)(d); or  
1056 (C) affect the power of the state to establish rates of taxation; and  
1057 (ii) shall:  
1058 (A) provide for the implementation of the subtraction described in Subsection (2)(d);  
1059 (B) be in writing;  
1060 (C) be signed by:  
1061 (I) the governor; and  
1062 (II) the chair of the Business Committee of the Ute tribe;  
1063 (D) be conditioned on obtaining any approval required by federal law; and  
1064 (E) state the effective date of the agreement.

1065 (c) (i) The governor shall report to the commission by no later than February 1 of each  
1066 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is  
1067 in effect.

1068 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the  
1069 subtraction permitted under Subsection (2)(d) is not allowed for taxable years beginning on or  
1070 after the January 1 following the termination of the agreement.

1071 (d) For purposes of Subsection (2)(d) and in accordance with Title 63, Chapter 46a,  
1072 Utah Administrative Rulemaking Act, the commission may make rules:  
1073 (i) for determining whether income is derived from a source within the Uintah and  
1074 Ouray Reservation; and  
1075 (ii) that are substantially similar to how adjusted gross income derived from Utah  
1076 sources is determined under Section 59-10-117.

1077 Section 17. Section **59-10-1202** is amended to read:  
1078 **59-10-1202. Definitions.**

1079 As used in this part:

1080 (1) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.

1081 (2) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.

1082 (3) "State income tax percentage for a nonresident individual" means a percentage  
1083 equal to a nonresident individual's adjusted gross income for the taxable year received from  
1084 Utah sources, as determined under Section 59-10-117, divided by the difference between:

1085 (a) the nonresident individual's total adjusted gross income for that taxable year; and

1086 (b) if the nonresident individual described in Subsection (3)(a) is a servicemember, the  
1087 compensation the servicemember receives for military service if the servicemember is serving  
1088 in compliance with military orders.

1089 (4) "State income tax percentage for a part-year resident individual" means, for a  
1090 taxable year, a fraction:

1091 (a) the numerator of which is the sum of:

1092 (i) for the time period during the taxable year that the part-year resident individual is a  
1093 resident, the part-year resident individual's total adjusted gross income for that time period; and

1094 (ii) for the time period during the taxable year that the part-year resident individual is a  
1095 nonresident, the part-year resident individual's adjusted gross income for that time period  
1096 received from Utah sources, as determined under Section 59-10-117; and

1097 (b) the denominator of which is the difference between:

1098 (i) the part-year resident individual's total adjusted gross income for that taxable year;

1099 and

1100 (ii) if the part-year resident individual is a servicemember, any compensation the  
1101 servicemember receives for military service during the portion of the taxable year that the  
1102 servicemember is a nonresident if the servicemember is serving in compliance with military  
1103 orders.

1104 [~~4~~] (5) "State taxable income" means a resident or nonresident individual's adjusted  
1105 gross income after making the:

1106 (a) additions and subtractions required by Section 59-10-1204; and

1107 (b) adjustments required by Section 59-10-1205.

1108 [~~5~~] (6) "Unapportioned state tax" means the product of the:

1109 (a) difference between:

- 1110 (i) a nonresident individual's state taxable income; and
- 1111 (ii) if the nonresident individual described in Subsection [~~(5)~~] (6)(a)(i) is a
- 1112 servicemember, compensation the servicemember receives for military service if the
- 1113 servicemember is serving in compliance with military orders; and
- 1114 (b) percentage listed in Subsection 59-10-1203(2)(a)(i)(B).
- 1115 Section 18. Section **59-10-1203** is amended to read:
- 1116 **59-10-1203. Single rate tax for resident or nonresident individual -- Tax rate --**
- 1117 **Contributions -- Exemption -- Amended returns.**
- 1118 (1) For taxable years beginning on or after January 1, 2007, a resident or nonresident
- 1119 individual may calculate and pay a tax under this section as provided in this part.
- 1120 (2) (a) A resident individual that calculates and pays a tax under this section:
- 1121 (i) shall pay for a taxable year an amount equal to the product of:
- 1122 (A) the resident individual's state taxable income for that taxable year; and
- 1123 (B) 5.35%; and
- 1124 (ii) is exempt from paying the tax imposed by Section 59-10-104.
- 1125 (b) A nonresident individual that calculates and pays a tax under this section:
- 1126 (i) shall pay for a taxable year an amount equal to the product of the nonresident
- 1127 individual's:
- 1128 (A) unapportioned state tax; and
- 1129 (B) state income tax percentage for the nonresident individual; and
- 1130 (ii) is exempt from paying the tax imposed by Section 59-10-116.
- 1131 (3) Except as required by Section 59-10-1204 or 59-10-1205, a resident or nonresident
- 1132 individual that calculates and pays a tax under this section may not make any addition or
- 1133 adjustment to or subtraction from adjusted gross income.
- 1134 (4) A resident or nonresident individual that calculates and pays a tax under this
- 1135 section may designate on the resident or nonresident individual's individual income tax return
- 1136 for a taxable year a contribution allowed by:
- 1137 (a) Section 59-10-530;
- 1138 (b) Section 59-10-530.5;
- 1139 (c) Section 59-10-547;
- 1140 (d) Section 59-10-549;

1141 (e) Section 59-10-550;

1142 (f) Section 59-10-550.1; or

1143 (g) Section 59-10-550.2.

1144 (5) This section does not apply to a resident or nonresident individual exempt from  
1145 taxation under Section 59-10-104.1.

1146 (6) (a) A resident or nonresident individual may determine for each taxable year for  
1147 which the resident or nonresident individual files an individual income tax return under this  
1148 chapter whether to calculate and pay a tax under this section as provided in this part.

1149 (b) If a resident or nonresident individual files an amended return for a taxable year  
1150 beginning on or after January 1, 2007, the resident or nonresident individual may determine  
1151 whether to calculate and pay a tax under this section as provided in this part for that taxable  
1152 year.

1153 Section 19. Section **59-10-1206.1** is enacted to read:

1154 **59-10-1206.1. Utah Educational Savings Plan tax credit.**

1155 (1) As used in this section:

1156 (a) "Account owner" is as defined in Section 53B-8a-102.

1157 (b) "Claimant" means a resident or nonresident individual that has state taxable income  
1158 under this part.

1159 (c) "Higher education costs" is as defined in Section 53B-8a-102.

1160 (d) "Maximum amount of a qualified investment for the taxable year" means, for a  
1161 taxable year:

1162 (i) for a claimant that is an account owner, if that claimant is a person other than  
1163 husband and wife account owners who file a single return jointly, the maximum amount of a  
1164 qualified investment:

1165 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

1166 (B) increased or decreased for that taxable year in accordance with Subsection  
1167 53B-8a-106(1)(f); or

1168 (ii) for claimants who are husband and wife account owners who file a single return  
1169 jointly, the maximum amount of a qualified investment:

1170 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

1171 (B) increased or decreased for that taxable year in accordance with Subsection

1172 53B-8a-106(1)(f).

1173 (e) "Qualified investment" is as defined in Section 53B-8a-102.

1174 (2) For taxable years beginning on or after January 1, 2007, a claimant that is an  
1175 account owner may claim a nonrefundable tax credit equal to the product of:

1176 (a) the lesser of:

1177 (i) the amount of a qualified investment the claimant:

1178 (A) makes during the taxable year; and

1179 (B) does not deduct on the claimant's federal individual income tax return; or

1180 (ii) the maximum amount of a qualified investment for the taxable year if the amount

1181 described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified investment

1182 for the taxable year; and

1183 (b) 5.35%.

1184 (3) A tax credit under this section may not be carried forward or carried back.

1185 Section 20. Section **59-10-1206.9** is enacted to read:

1186 **59-10-1206.9. Apportionment of tax credit.**

1187 A nonresident individual or a part-year resident individual that claims a tax credit in

1188 accordance with Section 59-10-1206.1 may only claim an apportioned amount of the tax credit

1189 equal to:

1190 (1) for a nonresident individual, the product of:

1191 (a) the state income tax percentage for the nonresident individual; and

1192 (b) the amount of the tax credit that the nonresident individual would have been

1193 allowed to claim but for the apportionment requirements of this section; or

1194 (2) for a part-year resident individual, the product of:

1195 (a) the state income tax percentage for the part-year resident individual; and

1196 (b) the amount of the tax credit that the part-year resident individual would have been

1197 allowed to claim but for the apportionment requirements of this section.

1198 Section 21. **Retrospective operation.**

1199 This bill has retrospective operation for taxable years beginning on or after January 1,

1200 2007.

1201 Section 22. **Coordinating H.B. 36 with S.B. 223 -- Merging substantive**

1202 **amendments.**

1203           If this H.B. 36 and S.B. 223, Tax Amendments, both pass, it is the intent of the  
1204 Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah  
1205 Code database for publication, modify Subsection 59-10-1206.1(2)(b) in this H.B. 36 to read:  
1206           "(b) (i) for the taxable year beginning on or after January 1, 2007, but beginning on or  
1207 before December 31, 2007, 5.35%; or  
1208           (ii) for taxable years beginning on or after January 1, 2008, 5%."



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**Fiscal Note****H.B. 36 2nd Sub. (Gray) - Income Tax Additions, Subtractions, and Credits  
for Higher Education Savings**

2007 General Session

State of Utah

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**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>
General Fund	\$0	\$0	\$0	\$0	(\$14,000)	(\$14,000)
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$14,000)</b>	<b>(\$14,000)</b>

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**Individual, Business and/or Local Impact**

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