

**INCOME TAX CREDITS, ADDITIONS, AND
SUBTRACTIONS FOR COLLEGE SAVINGS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Stephen H. Urquhart

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 to the taxation of investments and programs 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 federal taxable income; or
- use as the basis for claiming a tax credit;
- ▶ provides income tax deductions, additions, and tax credits for a Section 529,

Internal Revenue Code, college savings plan established and maintained by another state, the District of Columbia, or an agency or instrumentality of another state or the District of Columbia;

- ▶ modifies and clarifies the amount of a qualified investment in the Utah Educational Savings Plan Trust that a corporation may subtract from federal taxable income;
- ▶ modifies an addition to income for a corporation or a resident or nonresident



- 28 individual who is an account owner under the Utah Educational Savings Plan Trust for
29 amounts not expended for higher education costs under certain circumstances;
- 30 ▶ repeals an individual income tax subtraction for a qualified investment in the Utah
31 Educational Savings Plan Trust;
 - 32 ▶ provides that a resident or nonresident estate or trust may subtract certain qualified
33 investments in the Utah Educational Savings Plan Trust from federal taxable
34 income;
 - 35 ▶ requires a resident or nonresident estate or trust that is an account owner under the
36 Utah Educational Savings Plan Trust to add to federal taxable income amounts not
37 expended for higher education costs under certain circumstances;
 - 38 ▶ allows an individual income tax and single rate individual income tax credit for
39 qualified investments in the Utah Educational Savings Plan Trust Fund; and
 - 40 ▶ makes technical changes.

41 **Monies Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 This bill takes effect for taxable years beginning on or after January 1, 2008.

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47 **53B-8a-102**, as last amended by Chapter 109, Laws of Utah 2005
- 48 **53B-8a-103**, as last amended by Chapter 109, Laws of Utah 2005
- 49 **53B-8a-104**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 50 **53B-8a-105**, as last amended by Chapter 109, Laws of Utah 2005
- 51 **53B-8a-106**, as last amended by Chapter 223, Laws of Utah 2006
- 52 **53B-8a-107**, as last amended by Chapter 109, Laws of Utah 2005
- 53 **53B-8a-108**, as last amended by Chapter 109, Laws of Utah 2005
- 54 **53B-8a-109**, as last amended by Chapter 109, Laws of Utah 2005
- 55 **53B-8a-111**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 56 **53B-8a-112**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session
- 57 **53B-8a-113**, as last amended by Chapter 109, Laws of Utah 2005
- 58 **59-7-101**, as last amended by Chapter 54, Laws of Utah 2004

- 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 **59-7-402**, as last amended by Chapter 54, Laws of Utah 2004
- 62 **59-10-103**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session
- 63 **59-10-114**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session
- 64 **59-10-201**, as last amended by Chapter 223, Laws of Utah 2006
- 65 **59-10-202**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session
- 66 **59-10-1204**, as enacted by Chapter 2, Laws of Utah 2006, Fourth Special Session

67 ENACTS:

- 68 **59-10-1015.1**, Utah Code Annotated 1953
- 69 **59-10-1015.2**, Utah Code Annotated 1953



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

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

73 **53B-8a-102. Definitions.**

74 As used in this chapter:

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

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

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

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

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

88 (6) "Board" means the board of directors of the Utah Educational Savings Plan Trust
89 which is the state Board of Regents acting in its capacity as the Utah Higher Education

90 Assistance Authority under Title 53B, Chapter 12.

91 (7) "Endowment fund" means the endowment fund established under Section
92 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan Trust.

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

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

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

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

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

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

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

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

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

116 **53B-8a-103. Creation of Utah Educational Savings Plan Trust.**

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

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

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

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

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

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

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

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

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

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

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

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

165 (1) engage:

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

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

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

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

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

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

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

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

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

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

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

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

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

198 **53B-8a-106. Account agreements.**

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

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

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

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

210 (d) Subject to Subsection (1)(f), the maximum amount of a qualified investment that a
211 corporation that is an account owner may subtract from unadjusted income for a taxable year in
212 accordance with Title 59, Chapter 7, Corporate Franchise and Income Taxes, is \$1,620 for each
213 individual beneficiary for the taxable year beginning on or after January 1, 2007, but beginning

214 on or before December 31, 2007.

215 ~~[(d) The]~~ (e) Subject to Subsection (1)(f), the maximum amount of [investments] a
216 qualified investment that may be subtracted from federal taxable income [of a resident or
217 nonresident individual under Subsection 59-10-114(2)(i) shall be \$1,510] of 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 by a resident or nonresident individual in accordance with
220 Section 59-10-1015.1 or 59-10-1206, is:

221 (i) for a resident or nonresident estate or trust that is an account owner, \$1,620 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 2007, but beginning on or before December 31, 2007;

225 (ii) for a resident or nonresident individual that is an account owner, other than a
226 husband and wife who file a single return jointly, \$1,620 for each individual beneficiary for the
227 taxable year beginning on or after January 1, 2007, but beginning on or before December 31,
228 2007; or

229 (iii) for a husband and wife who are account owners and file a single return jointly,
230 \$3,240 for each individual beneficiary:

231 (A) for the taxable year beginning on or after January 1, 2007, but beginning on or
232 before December 31, 2007; 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, 2008, 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 2006.

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; or

260 (II) Section 59-10-202; or

261 (B) use a qualified investment as the basis for claiming a tax credit in accordance with:

262 (I) Section 59-10-1015.1; or

263 (II) Section 59-10-1206.

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(2)(c)(ii) and the earnings on those monies when an account
380 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 **59-7-101** is amended to read:

432 **59-7-101. Definitions.**

433 As used in this chapter:

434 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105
435 and 59-7-106.

436 (2) (a) "Affiliated group" means one or more chains of corporations that are connected
437 through stock ownership with a common parent corporation that meet the following
438 requirements:

439 (i) at least 80% of the stock of each of the corporations in the group, excluding the
440 common parent corporation, is owned by one or more of the other corporations in the group;
441 and

442 (ii) the common parent directly owns at least 80% of the stock of at least one of the
443 corporations in the group.

444 (b) "Affiliated group" does not include corporations that are qualified to do business
445 but are not otherwise doing business in this state.

446 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which
447 is limited and preferred as to dividends.

448 (3) "Apportionable income" means adjusted income less nonbusiness income net of
449 related expenses, to the extent included in adjusted income.

450 (4) "Apportioned income" means apportionable income multiplied by the
451 apportionment fraction as determined in Section 59-7-311.

452 (5) "Business income" is as defined in Section 59-7-302.

453 (6) "Corporate return" or "return" includes a combined report.

454 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
455 than 50% of the outstanding voting stock of:

456 (i) a parent-subsidary controlled group as defined in Section 1563, Internal Revenue
457 Code, except that 50% shall be substituted for 80%;

458 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
459 Code, except that 50% shall be substituted for 80%; or

460 (iii) three or more corporations each of which is a member of a group of corporations
461 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

462 (A) a common parent corporation included in a group of corporations described in
463 Subsection (2)(a)(i); and

464 (B) included in a group of corporations described in Subsection (2)(a)(ii).

465 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
466 Internal Revenue Code.

467 (8) "Corporation" includes:

468 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue
469 Code; and

470 (b) other organizations that are taxed as corporations for federal income tax purposes
471 under the Internal Revenue Code.

472 (9) "Designated beneficiary" is as defined in Section 529(e)(1), Internal Revenue Code.

473 [~~9~~] (10) "Dividend" means any distribution, including money or other type of
474 property, made by a corporation to its shareholders out of its earnings or profits accumulated
475 after December 31, 1930.

476 [~~10~~] (11) (a) "Doing business" includes any transaction in the course of its business
477 by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate
478 business in this state.

479 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:

480 (i) the right to do business through incorporation or qualification;

481 (ii) the owning, renting, or leasing of real or personal property within this state; and

482 (iii) the participation in joint ventures, working and operating agreements, the
483 performance of which takes place in this state.

484 [~~11~~] (12) "Domestic corporation" means a corporation that is incorporated or
485 organized under the laws of this state.

486 [~~12~~] (13) (a) "Farmers' cooperative" means an association, corporation, or other
487 organization that is:

488 (i) (A) an association, corporation, or other organization of:

489 (I) farmers; or

490 (II) fruit growers; or

491 (B) an association, corporation, or other organization that is similar to an association,
492 corporation, or organization described in Subsection [~~13~~] (13)(a)(i)(A); and

493 (ii) organized and operated on a cooperative basis to:

494 (A) (I) market the products of members of the cooperative or the products of other
495 producers; and

496 (II) return to the members of the cooperative or other producers the proceeds of sales
497 less necessary marketing expenses on the basis of the quantity of the products of a member or
498 producer or the value of the products of a member or producer; or

499 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
500 other persons; and

501 (II) turn over the supplies and equipment described in Subsection [~~(12)~~]
502 (13)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or
503 other persons.

504 (b) (i) Subject to Subsection [~~(12)~~] (13)(b)(ii), for purposes of this Subsection [~~(12)~~]
505 (13), the commission by rule, made in accordance with Title 63, Chapter 46a, Utah
506 Administrative Rulemaking Act, shall define:

507 (A) the terms:

508 (I) "member"; and

509 (II) "producer"; and

510 (B) what constitutes an association, corporation, or other organization that is similar to
511 an association, corporation, or organization described in Subsection [~~(12)~~] (13)(a)(i)(A).

512 (ii) The rules made under this Subsection [~~(12)~~] (13)(b) shall be consistent with the
513 filing requirements under federal law for a farmers' cooperative.

514 [~~(13)~~] (14) "Foreign corporation" means a corporation that is not incorporated or
515 organized under the laws of this state.

516 [~~(14)~~] (15) (a) "Foreign operating company" means a corporation that:

517 (i) is incorporated in the United States; and

518 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is
519 conducted outside the United States.

520 (b) "Foreign operating company" does not include a corporation that qualifies for the
521 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

522 [~~(15)~~] (16) "Income" includes losses.

523 [~~(16)~~] (17) "Internal Revenue Code" means Title 26 of the United States Code as

524 effective during the year in which Utah taxable income is determined.

525 ~~[(17)]~~ (18) "Nonbusiness income" is as defined in Section 59-7-302.

526 ~~[(18)]~~ (19) "Nonresident shareholder" means any shareholder of an S corporation who
527 on the last day of the taxable year of the S corporation, is:

528 (a) an individual not domiciled in Utah; or

529 (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.

530 (20) (a) "Other state Section 529 college savings plan" means a program:

531 (i) established and maintained by any of the following entities:

532 (A) a state, other than this state;

533 (B) the District of Columbia; or

534 (C) an agency or instrumentality of Subsections (20)(a)(i)(A) or (B);

535 (ii) under which a person may make contributions to an account that is established for
536 the purpose of meeting the higher education costs, as defined in Section 53B-8a-102, of a
537 designated beneficiary of the account; and

538 (iii) that meets the requirements of:

539 (A) a qualified tuition program under Section 529, Internal Revenue Code; and

540 (B) the entity described in Subsection (20)(a)(i) that establishes and maintains the
541 program.

542 (b) "Other state Section 529 college savings plan" does not include a plan described in
543 Section 529(b)(1)(A)(i), Internal Revenue Code.

544 ~~[(19)]~~ (21) "Related expenses" means:

545 (a) expenses directly attributable to nonbusiness income; and

546 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
547 and business income which bears the same ratio to the aggregate amount of such interest or
548 other expense, determined without regard to this Subsection ~~[(19)]~~ (21), as the average amount
549 of the asset producing the nonbusiness income bears to the average amount of all assets of the
550 taxpayer within the taxable year.

551 ~~[(20)]~~ (22) "Resident shareholder" means any shareholder of an S corporation who is
552 not a nonresident shareholder.

553 ~~[(21)]~~ (23) "S corporation" means an S corporation as defined in Section 1361, Internal
554 Revenue Code.

555 [~~(22)~~] (24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
556 Section 168, Internal Revenue Code.

557 [~~(23)~~] (25) "State of the United States" includes any of the 50 states or the District of
558 Columbia and "United States" includes the 50 states and the District of Columbia.

559 [~~(24)~~] (26) (a) "Taxable year" means the calendar year or the fiscal year ending during
560 such calendar year upon the basis of which the adjusted income is computed.

561 (b) In the case of a return made for a fractional part of a year under this chapter or
562 under rules prescribed by the commission, "taxable year" includes the period for which such
563 return is made.

564 [~~(25)~~] (27) "Taxpayer" means any corporation subject to the tax imposed by this
565 chapter.

566 [~~(26)~~] (28) "Threshold level of business activity" means business activity in the United
567 States equal to or greater than 20% of the corporation's total business activity as determined
568 under Section 59-7-401.

569 [~~(27)~~] (29) "Unadjusted income" means federal taxable income as determined on a
570 separate return basis before intercompany eliminations as determined by the Internal Revenue
571 Code, before the net operating loss deduction and special deductions for dividends received.

572 [~~(28)~~] (30) (a) "Unitary group" means a group of corporations that:

573 (i) are related through common ownership; and

574 (ii) by a preponderance of the evidence as determined by a court of competent
575 jurisdiction or the commission, are economically interdependent with one another as
576 demonstrated by the following factors:

577 (A) centralized management;

578 (B) functional integration; and

579 (C) economies of scale.

580 (b) "Unitary group" does not include S corporations.

581 [~~(29)~~] (31) "Utah net loss" means the current year Utah taxable income before Utah net
582 loss deduction, if determined to be less than zero.

583 [~~(30)~~] (32) "Utah net loss deduction" means the amount of Utah net losses from other
584 taxable years that may be carried back or carried forward to the current taxable year in
585 accordance with Section 59-7-110.

586 ~~[(31)]~~ (33) (a) "Utah taxable income" means Utah taxable income before net loss
587 deduction less Utah net loss deduction.

588 (b) "Utah taxable income" includes income from tangible or intangible property located
589 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign
590 commerce.

591 ~~[(32)]~~ (34) "Utah taxable income before net loss deduction" means apportioned income
592 plus nonbusiness income allocable to Utah net of related expenses.

593 ~~[(33)]~~ (35) (a) "Water's edge combined report" means a report combining the income
594 and activities of:

595 (i) all members of a unitary group that are:

596 (A) corporations organized or incorporated in the United States, including those
597 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
598 936, Internal Revenue Code, in accordance with Subsection ~~[(33)]~~ (35)(b); and

599 (B) corporations organized or incorporated outside of the United States meeting the
600 threshold level of business activity; and

601 (ii) an affiliated group electing to file a water's edge combined report under Subsection
602 59-7-402(2).

603 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
604 Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a
605 unitary group.

606 ~~[(34)]~~ (36) "Worldwide combined report" means the combination of the income and
607 activities of all members of a unitary group irrespective of the country in which the
608 corporations are incorporated or conduct business activity.

609 Section 13. Section **59-7-105** is amended to read:

610 **59-7-105. Additions to unadjusted income.**

611 In computing adjusted income the following amounts shall be added to unadjusted
612 income:

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

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

- 617 (a) to Utah for taxes imposed by this chapter; and
- 618 (b) to another state of the United States, a foreign country, a United States possession,
619 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or
620 exercising its corporate franchise, including income, franchise, corporate stock and business
621 and occupation taxes;
- 622 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and
623 (2)(a);
- 624 (4) capital losses that have been deducted on a Utah corporate return in previous years;
- 625 (5) any deduction on the federal return that has been previously deducted on the Utah
626 return;
- 627 (6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;
- 628 (7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated
629 technological equipment;
- 630 (8) charitable contributions, to the extent deducted on the federal return when
631 determining federal taxable income;
- 632 (9) the amount of gain or loss determined under Section 59-7-114 relating to a target
633 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already
634 been included in the unadjusted income of the target corporation;
- 635 (10) the amount of gain or loss determined under Section 59-7-115 relating to
636 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
637 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
638 income of the target corporation;
- 639 (11) adjustments to gains, losses, depreciation expense, amortization expense, and
640 similar items due to a difference between basis for federal purposes and basis as computed
641 under Section 59-7-107; ~~and~~
- 642 (12) the amount ~~[disbursed to]~~ withdrawn under Title 53B, Chapter 8a, Higher
643 Education Savings Incentive Program, from the account of a corporation that is an account
644 owner [under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, to the
645 extent deducted on a Utah return in previous years and not used for qualified higher education
646 costs of the beneficiary, in the year in which the amount is disbursed.] as defined in Section
647 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn

648 from the account of the corporation that is the account owner:

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

650 (b) is subtracted by the corporation:

651 (i) that is the account owner; and

652 (ii) in accordance with Subsection 59-7-106(18); and

653 (13) the amount withdrawn from an other state Section 529 college savings plan, from

654 the account of a corporation that owns the account, for the taxable year for which the amount is

655 withdrawn, if that amount withdrawn from the account of the corporation that owns the

656 account:

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

658 (b) is subtracted by the corporation:

659 (i) that owns the account; and

660 (ii) in accordance with Subsection 59-7-106(19).

661 Section 14. Section **59-7-106** is amended to read:

662 **59-7-106. Subtractions from unadjusted income.**

663 In computing adjusted income the following amounts shall be subtracted from

664 unadjusted income:

665 (1) the foreign dividend gross-up included in gross income for federal income tax

666 purposes under Section 78, Internal Revenue Code;

667 (2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct

668 the loss on the current Utah return. The deduction shall be made by claiming the deduction on

669 the current Utah return which shall be filed by the due date of the return, including extensions.

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

671 (a) deducted in the year incurred; or

672 (b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue

673 Code;

674 (3) the decrease in salary expense deduction for federal income tax purposes due to

675 claiming the federal jobs credit under Section 51, Internal Revenue Code;

676 (4) the decrease in qualified research and basic research expense deduction for federal

677 income tax purposes due to claiming the federal research and development credit under Section

678 41, Internal Revenue Code;

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

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

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

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

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

693 (10) charitable contributions, to the extent allowed as a subtraction under Section
694 59-7-109;

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

704 (b) in determining income apportionable to this state, a portion of the factors of a
705 foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be
706 included in the combined report factors. The portion to be included shall be determined by
707 multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the
708 numerator of which is the amount of the dividend paid by the foreign subsidiary which is
709 included in adjusted income, and the denominator of which is the current year earnings and

710 profits of the foreign subsidiary as determined under the Internal Revenue Code;

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

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

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

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

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

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

733 (16) any interest expense not deducted on the federal corporate return under Section
734 265(b) or 291(e), Internal Revenue Code;

735 (17) 100% of the dividends received from subsidiaries which are insurance companies
736 exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"
737 as defined by Subsection 59-7-101(7); ~~[and]~~

738 ~~[(18) any amount included in unadjusted income that was derived from money paid by~~
739 ~~the taxpayer to the program fund and investment income earned on those payments under Title~~
740 ~~53B, Chapter 8a, Higher Education Savings Incentive Program, that is included in federal~~

741 taxable income, but only when the monies are used for qualified higher education costs of the
742 beneficiary.]

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

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

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

749 (c) does not exceed the maximum amount of the qualified investment that may be
750 subtracted from unadjusted income for a taxable year in accordance with Subsections
751 53B-8a-106(1)(d) and (f); and

752 (19) subject to Subsection 59-7-105(13), the amount of an investment in an other state
753 Section 529 college savings plan that:

754 (a) a corporation that owns the account makes during the taxable year;

755 (b) the corporation described in Subsection (19)(a) does not deduct on a federal
756 corporation income tax return; and

757 (c) does not exceed the maximum amount that may be subtracted from unadjusted
758 income for a taxable year in accordance with Subsections 53B-8a-106(1)(d) and (f) for
759 purposes of a qualified investment in the Utah Educational Savings Plan Trust.

760 Section 15. Section **59-7-402** is amended to read:

761 **59-7-402. Water's edge combined report.**

762 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection
763 59-7-101[~~(33)~~](35)(a) is doing business in Utah, the unitary group shall file a water's edge
764 combined report.

765 (2) (a) A group of corporations that are not otherwise a unitary group may elect to file a
766 water's edge combined report if each member of the group is:

767 (i) doing business in Utah;

768 (ii) part of the same affiliated group; and

769 (iii) qualified, under Section 1501, Internal Revenue Code, to file a federal
770 consolidated return.

771 (b) Each corporation within the affiliated group that is doing business in Utah must

772 consent to filing a combined report. If an affiliated group elects to file a combined report, each
773 corporation within the affiliated group that is doing business in Utah must file a combined
774 report.

775 (c) Corporations that elect to file a water's edge combined report under this section may
776 not thereafter elect to file a separate return without the consent of the commission.

777 Section 16. Section **59-10-103** is amended to read:

778 **59-10-103. Definitions.**

779 (1) As used in this chapter:

780 (a) "Adjusted gross income":

781 (i) for a resident or nonresident individual, is as defined in Section 62, Internal
782 Revenue Code; or

783 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),
784 Internal Revenue Code.

785 (b) "Adoption expenses" means:

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

788 (ii) any welfare agency fees or costs;

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

790 (iv) any legal fees or costs; or

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

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

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

794 (ii) is eligible for services under Title 62A, Chapter 5, Services for People with
795 Disabilities; and

796 (iii) is not enrolled in:

797 (A) an education program for students with disabilities that is authorized under Section
798 53A-15-301; or

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

800 (d) (i) For purposes of Subsection 59-10-114(2)[(†)](k), "capital gain transaction"

801 means a transaction that results in a:

802 (A) short-term capital gain; or

803 (B) long-term capital gain.

804 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
805 the commission may by rule define the term "transaction."

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

808 (f) "Corporation" includes:

809 (i) associations;

810 (ii) joint stock companies; and

811 (iii) insurance companies.

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

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

816 (I) autism;

817 (II) deafness;

818 (III) preschool developmental delay;

819 (IV) dual sensory impairment;

820 (V) hearing impairment;

821 (VI) intellectual disability;

822 (VII) multidisability;

823 (VIII) orthopedic impairment;

824 (IX) other health impairment;

825 (X) traumatic brain injury; or

826 (XI) visual impairment;

827 (B) is not receiving residential services from:

828 (I) the Division of Services for People with Disabilities created under Section
829 62A-5-102; or

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

831 and

832 (C) is enrolled in:

833 (I) an education program for students with disabilities that is authorized under Section

834 53A-15-301; or
835 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
836 or
837 (ii) is identified under guidelines of the Department of Health as qualified for:
838 (A) Early Intervention; or
839 (B) Infant Development Services.
840 (h) "Designated beneficiary" is as defined in Section 529(e)(1), Internal Revenue Code.
841 ~~(h)~~ (i) "Distributable net income" is as defined in Section 643, Internal Revenue
842 Code.
843 ~~(i)~~ (j) "Employee" is as defined in Section 59-10-401.
844 ~~(j)~~ (k) "Employer" is as defined in Section 59-10-401.
845 ~~(k)~~ (l) "Federal taxable income":
846 (i) for a resident or nonresident individual, means taxable income as defined by Section
847 63, Internal Revenue Code; or
848 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
849 (b), Internal Revenue Code.
850 ~~(l)~~ (m) "Fiduciary" means:
851 (i) a guardian;
852 (ii) a trustee;
853 (iii) an executor;
854 (iv) an administrator;
855 (v) a receiver;
856 (vi) a conservator; or
857 (vii) any person acting in any fiduciary capacity for any individual.
858 ~~(m)~~ (n) "Homesteaded land diminished from the Uintah and Ouray Reservation"
859 means the homesteaded land that was held to have been diminished from the Uintah and Ouray
860 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).
861 ~~(n)~~ (o) "Individual" means a natural person and includes aliens and minors.
862 ~~(o)~~ (p) "Irrevocable trust" means a trust in which the settlor may not revoke or
863 terminate all or part of the trust without the consent of a person who has a substantial beneficial
864 interest in the trust and the interest would be adversely affected by the exercise of the settlor's

865 power to revoke or terminate all or part of the trust.

866 ~~[(p)]~~ (q) For purposes of Subsection 59-10-114(2)~~[(k)]~~, "long-term capital gain" is as
867 defined in Section 1222, Internal Revenue Code.

868 ~~[(q)]~~ (r) "Nonresident individual" means an individual who is not a resident of this
869 state.

870 ~~[(r)]~~ (s) "Nonresident trust" or "nonresident estate" means a trust or estate which is not
871 a resident estate or trust.

872 (t) (i) "Other state Section 529 college savings plan" means a program:

873 (A) established and maintained by any of the following entities:

874 (I) a state, other than this state;

875 (II) the District of Columbia; or

876 (III) an agency or instrumentality of Subsection (1)(t)(i)(A)(I) or (II);

877 (B) under which a person may make contributions to an account that is established for
878 the purpose of meeting the higher education costs, as defined in Section 53B-8a-102, of a
879 designated beneficiary of the account; and

880 (C) that meets the requirements of:

881 (I) a qualified tuition program under Section 529, Internal Revenue Code; and

882 (II) the entity described in Subsection (1)(t)(i)(A) that establishes and maintains the
883 program.

884 (ii) "Other state Section 529 college savings plan" does not include a plan described in
885 Section 529(b)(1)(A)(i), Internal Revenue Code.

886 ~~[(s)]~~ (u) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
887 unincorporated organization:

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

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

891 (I) a trust;

892 (II) an estate; or

893 (III) a corporation.

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

896 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
897 organization described in Subsection (1)~~(t)~~ (u)(i).

898 ~~(t)~~ (v) "Qualifying military servicemember" means a member of:

899 (i) The Utah Army National Guard;

900 (ii) The Utah Air National Guard; or

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

902 (A) The Army Reserve;

903 (B) The Naval Reserve;

904 (C) The Air Force Reserve;

905 (D) The Marine Corps Reserve; or

906 (E) The Coast Guard Reserve.

907 ~~(t)~~ (w) "Qualifying stock" means stock that is:

908 (i) (A) common; or

909 (B) preferred;

910 (ii) as defined by the commission by rule, originally issued to:

911 (A) a resident or nonresident individual; or

912 (B) a partnership if the resident or nonresident individual making a subtraction from
913 federal taxable income in accordance with Subsection 59-10-114(2)~~(t)~~(k):

914 (I) was a partner when the stock was issued; and

915 (II) remains a partner until the last day of the taxable year for which the resident or
916 nonresident individual makes the subtraction from federal taxable income in accordance with
917 Subsection 59-10-114(2)~~(t)~~(k); and

918 (iii) issued:

919 (A) by a Utah small business corporation;

920 (B) on or after January 1, 2003; and

921 (C) for:

922 (I) money; or

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

924 ~~(v)~~ (x) (i) "Resident individual" means:

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

927 this state; or

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

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

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

931 (ii) For purposes of Subsection (1)~~(w)~~(x)(i)(B), a fraction of a calendar day shall be
932 counted as a whole day.

933 ~~(w)~~ (y) "Resident estate" or "resident trust" is as defined in Section 75-7-103.

934 ~~(x)~~ (z) For purposes of Subsection 59-10-114(2)~~(t)~~(k), "short-term capital gain" is
935 as defined in Section 1222, Internal Revenue Code.

936 ~~(y)~~ (aa) "Taxable income" or "state taxable income":

937 (i) subject to Subsection 59-10-302(2), for a resident individual other than a resident
938 individual described in Subsection (1)~~(y)~~(aa)(iii), means the resident individual's federal
939 taxable income after making the:

940 (A) additions and subtractions required by Section 59-10-114; and

941 (B) adjustments required by Section 59-10-115;

942 (ii) for a nonresident individual other than a nonresident individual described in
943 Subsection (1)~~(y)~~(aa)(iii), is as defined in Section 59-10-116;

944 (iii) for a resident or nonresident individual that collects and pays a tax described in
945 Part 12, Single Rate Individual Income Tax Act, is as defined in Section 59-10-1202;

946 (iv) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

947 (v) for a nonresident estate or trust, is as calculated under Section 59-10-204.

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

950 ~~(aa)~~ (cc) "Uintah and Ouray Reservation" means the lands recognized as being
951 included within the Uintah and Ouray Reservation in:

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

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

954 ~~(bb)~~ (dd) (i) "Utah small business corporation" means a corporation that:

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

957 (B) except as provided in Subsection (1)~~(bb)~~(dd)(ii), meets the requirements of

958 Section 1244(c)(1)(C), Internal Revenue Code; and

959 (C) has its commercial domicile in this state.

960 (ii) Notwithstanding Subsection (1)~~(bb)~~(dd)(i)(B), the time period described in

961 Section 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the

962 source of a corporation's aggregate gross receipts shall end on the last day of the taxable year

963 for which the resident or nonresident individual makes a subtraction from federal taxable

964 income in accordance with Subsection 59-10-114(2)~~(h)~~(k).

965 ~~(ee)~~ (ee) "Ute tribal member" means a person who is enrolled as a member of the Ute

966 Indian Tribe of the Uintah and Ouray Reservation.

967 ~~(dd)~~ (ff) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

968 ~~(ee)~~ (gg) "Wages" is as defined in Section 59-10-401.

969 (2) (a) Any term used in this chapter has the same meaning as when used in

970 comparable context in the laws of the United States relating to federal income taxes unless a

971 different meaning is clearly required.

972 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall

973 mean the Internal Revenue Code or other provisions of the laws of the United States relating to

974 federal income taxes that are in effect for the taxable year.

975 (c) Any reference to a specific section of the Internal Revenue Code or other provision

976 of the laws of the United States relating to federal income taxes shall include any

977 corresponding or comparable provisions of the Internal Revenue Code as hereafter amended,

978 redesignated, or reenacted.

979 Section 17. Section **59-10-114** is amended to read:

980 **59-10-114. Additions to and subtractions from federal taxable income of an**

981 **individual.**

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

983 individual:

984 (a) the amount of any income tax imposed by this or any predecessor Utah individual

985 income tax law and the amount of any income tax imposed by the laws of another state, the

986 District of Columbia, or a possession of the United States, to the extent deducted from adjusted

987 gross income in determining federal taxable income;

988 (b) a lump sum distribution that the taxpayer does not include in adjusted gross income

989 on the taxpayer's federal individual income tax return for the taxable year;

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

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

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

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

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

1000 (i) the resident or nonresident individual did not deduct or include the amounts on the
1001 resident or nonresident individual's federal individual income tax return pursuant to Section
1002 220, Internal Revenue Code;

1003 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

1004 (iii) the withdrawal is deducted by the resident or nonresident individual under
1005 Subsection (2)(h);

1006 (f) the amount ~~[disbursed to]~~ withdrawn under Title 53B, Chapter 8a, Higher
1007 Education Savings Incentive Program, from the account of a resident or nonresident individual
1008 who is an account owner [under Title 53B, Chapter 8a, Higher Education Savings Incentive
1009 Program] as defined in Section 53B-8a-102, for the taxable year for which the amount is
1010 [disbursed] withdrawn, if that amount [disbursed to] withdrawn from the account of the
1011 resident or nonresident individual who is the account owner:

1012 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and

1013 (ii) is:

1014 (A) deducted by the account owner [under Subsection (2)(i);] on an individual income
1015 tax return:

1016 (I) under this chapter; and

1017 (II) filed for a taxable year beginning on or before December 31, 2007; or

1018 (B) used as the basis for the resident or nonresident individual who is the account
1019 owner to claim a tax credit under Section 59-10-1015.1;

1020 (g) except as provided in Subsection (6), for taxable years beginning on or after
1021 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
1022 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
1023 one or more of the following entities:

- 1024 (i) a state other than this state;
- 1025 (ii) the District of Columbia;
- 1026 (iii) a political subdivision of a state other than this state; or
- 1027 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
1028 (iii);

1029 (h) subject to Subsection (2)~~(n)~~(m), any distribution received by a resident
1030 beneficiary of a resident trust of income that was taxed at the trust level for federal tax
1031 purposes, but was subtracted from state taxable income of the trust pursuant to Subsection
1032 59-10-202(2)(c);

- 1033 (i) any distribution received by a resident beneficiary of a nonresident trust of
1034 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
1035 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
1036 was not taxed at the trust level by any state, with undistributed distributable net income
1037 considered to be distributed from the most recently accumulated undistributed distributable net
1038 income; ~~and~~
- 1039 (j) any adoption expense:
 - 1040 (i) for which a resident or nonresident individual receives reimbursement from another
1041 person; and
 - 1042 (ii) to the extent to which the resident or nonresident individual deducts that adoption
1043 expense:
 - 1044 (A) under Subsection (2)(c); or
 - 1045 (B) from federal taxable income on a federal individual income tax return~~[-];~~ and
- 1046 (k) the amount withdrawn from an other state Section 529 college savings plan, from
1047 the account of a resident or nonresident individual who owns the account, for the taxable year
1048 for which the amount is withdrawn, if that amount withdrawn from the account of the resident
1049 or nonresident individual who owns the account is:
 - 1050 (i) not expended for higher education costs as defined in Section 53B-8a-102; and

1051 (ii) used as the basis for the resident or nonresident individual who owns the account to
1052 claim a tax credit under Section 59-10-1015.2.

1053 (2) There shall be subtracted from federal taxable income of a resident or nonresident
1054 individual:

1055 (a) the interest or a dividend on obligations or securities of the United States and its
1056 possessions or of any authority, commission, or instrumentality of the United States, to the
1057 extent that interest or dividend is included in gross income for federal income tax purposes for
1058 the taxable year but exempt from state income taxes under the laws of the United States, but
1059 the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on
1060 indebtedness incurred or continued to purchase or carry the obligations or securities described
1061 in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend
1062 income described in this Subsection (2)(a) to the extent that such expenses, including
1063 amortizable bond premiums, are deductible in determining federal taxable income;

1064 (b) 1/2 of the net amount of any income tax paid or payable to the United States after all
1065 allowable credits, as reported on the United States individual income tax return of the taxpayer
1066 for the same taxable year;

1067 (c) the amount of adoption expenses for one of the following taxable years as elected
1068 by the resident or nonresident individual:

1069 (i) regardless of whether a court issues an order granting the adoption, the taxable year
1070 in which the adoption expenses are:

1071 (A) paid; or

1072 (B) incurred;

1073 (ii) the taxable year in which a court issues an order granting the adoption; or

1074 (iii) any year in which the resident or nonresident individual may claim the federal
1075 adoption expenses credit under Section 23, Internal Revenue Code;

1076 (d) amounts received by taxpayers under age 65 as retirement income which, for
1077 purposes of this section, means pensions and annuities, paid from an annuity contract
1078 purchased by an employer under a plan which meets the requirements of Section 404(a)(2),
1079 Internal Revenue Code, or purchased by an employee under a plan which meets the
1080 requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or
1081 political subdivision thereof, or the District of Columbia, to the employee involved or the

1082 surviving spouse;

1083 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500

1084 personal retirement exemption;

1085 (f) 75% of the amount of the personal exemption, as defined and calculated in the
1086 Internal Revenue Code, for each dependent child with a disability and adult with a disability
1087 who is claimed as a dependent on a taxpayer's return;

1088 (g) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the
1089 taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

1090 (i) for:

1091 (A) the taxpayer;

1092 (B) the taxpayer's spouse; and

1093 (C) the taxpayer's dependents; and

1094 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
1095 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

1096 (h) (i) except as provided in this Subsection (2)(h), the amount of a contribution made
1097 during the taxable year on behalf of the taxpayer to a medical care savings account and interest
1098 earned on a contribution to a medical care savings account established pursuant to Title 31A,
1099 Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by
1100 the account administrator as provided in the Medical Care Savings Account Act, and if the
1101 taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax
1102 return pursuant to Section 220, Internal Revenue Code; and

1103 (ii) a contribution deductible under this Subsection (2)(h) may not exceed either of the
1104 following:

1105 (A) the maximum contribution allowed under the Medical Care Savings Account Act
1106 for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is
1107 covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that
1108 covers the other spouse, and each spouse has a medical care savings account; or

1109 (B) the maximum contribution allowed under the Medical Care Savings Account Act
1110 for the tax year for taxpayers:

1111 (I) who do not file a joint return; or

1112 (II) who file a joint return, but do not qualify under Subsection (2)(h)(ii)(A);

1113 ~~[(i) the amount included in federal taxable income that was derived from money paid~~
 1114 ~~by an account owner to the program fund under Title 53B, Chapter 8a, Higher Education~~
 1115 ~~Savings Incentive Program, not to exceed amounts determined under Subsection~~
 1116 ~~53B-8a-106(1)(d), and investment income earned on account agreements entered into under~~
 1117 ~~Section 53B-8a-106 that is included in federal taxable income, but only when the funds are~~
 1118 ~~used for qualified higher education costs of the beneficiary;]~~

1119 ~~[(j) (i) for taxable years beginning on or after January 1, 2000, any amounts paid for~~
 1120 ~~premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the~~
 1121 ~~amounts paid for long-term care insurance were not deducted under Section 213, Internal~~
 1122 ~~Revenue Code, in determining federal taxable income;~~

1123 ~~[(k) (j) for taxable years beginning on or after January 1, 2000, if the conditions of~~
 1124 ~~Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:~~

1125 ~~(i) during a time period that the Ute tribal member resides on homesteaded land~~
 1126 ~~diminished from the Uintah and Ouray Reservation; and~~

1127 ~~(ii) from a source within the Uintah and Ouray Reservation;~~

1128 ~~[(l) (k) (i) for taxable years beginning on or after January 1, 2003, the total amount of~~
 1129 ~~a resident or nonresident individual's short-term capital gain or long-term capital gain on a~~
 1130 ~~capital gain transaction:~~

1131 ~~(A) that occurs on or after January 1, 2003;~~

1132 ~~(B) if 70% or more of the gross proceeds of the capital gain transaction are expended:~~

1133 ~~(I) to purchase qualifying stock in a Utah small business corporation; and~~

1134 ~~(II) within a 12-month period after the day on which the capital gain transaction occurs;~~

1135 ~~and~~

1136 ~~(C) if, prior to the purchase of the qualifying stock described in Subsection~~
 1137 ~~(2)[(l)](k)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in~~
 1138 ~~the Utah small business corporation that issued the qualifying stock; and~~

1139 ~~(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the~~
 1140 ~~commission may make rules:~~

1141 ~~(A) defining the term "gross proceeds"; and~~

1142 ~~(B) for purposes of Subsection (2)[(l)](k)(i)(C), prescribing the circumstances under~~
 1143 ~~which a resident or nonresident individual has an ownership interest in a Utah small business~~

1144 corporation;

1145 ~~[(m)]~~ (l) for the taxable year beginning on or after January 1, 2005, but beginning on or

1146 before December 31, 2005, the first \$2,200 of income a qualifying military servicemember

1147 receives:

1148 (i) for service:

1149 (A) as a qualifying military servicemember; or

1150 (B) under an order into active service in accordance with Section 39-1-5; and

1151 (ii) to the extent that income is included in adjusted gross income on that resident or

1152 nonresident individual's federal individual income tax return for that taxable year;

1153 ~~[(n)]~~ (m) an amount received by a resident or nonresident individual or distribution

1154 received by a resident or nonresident beneficiary of a resident trust:

1155 (i) if that amount or distribution constitutes a refund of taxes imposed by:

1156 (A) a state; or

1157 (B) the District of Columbia; and

1158 (ii) to the extent that amount or distribution is included in adjusted gross income for

1159 that taxable year on the federal individual income tax return of the resident or nonresident

1160 individual or resident or nonresident beneficiary of a resident trust;

1161 ~~[(o)]~~ (n) the amount of a railroad retirement benefit:

1162 (i) paid:

1163 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et

1164 seq.;

1165 (B) to a resident or nonresident individual; and

1166 (C) for the taxable year; and

1167 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on

1168 that resident or nonresident individual's federal individual income tax return for that taxable

1169 year; and

1170 ~~[(p)]~~ (o) an amount:

1171 (i) received by an enrolled member of an American Indian tribe; and

1172 (ii) to the extent that the state is not authorized or permitted to impose a tax under this

1173 part on that amount in accordance with:

1174 (A) federal law;

- 1175 (B) a treaty; or
- 1176 (C) a final decision issued by a court of competent jurisdiction.
- 1177 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
- 1178 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
- 1179 \$4,800, except that:
- 1180 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
- 1181 earned over \$32,000, the amount of the retirement income exemption that may be subtracted
- 1182 shall be reduced by 50 cents;
- 1183 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
- 1184 earned over \$16,000, the amount of the retirement income exemption that may be subtracted
- 1185 shall be reduced by 50 cents; and
- 1186 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
- 1187 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
- 1188 reduced by 50 cents.
- 1189 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption
- 1190 shall be further reduced according to the following schedule:
- 1191 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
- 1192 earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50
- 1193 cents;
- 1194 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
- 1195 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50
- 1196 cents; and
- 1197 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
- 1198 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.
- 1199 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be
- 1200 calculated by adding to adjusted gross income any interest income not otherwise included in
- 1201 adjusted gross income.
- 1202 (d) For purposes of determining ownership of items of retirement income common law
- 1203 doctrine will be applied in all cases even though some items may have originated from service
- 1204 or investments in a community property state. Amounts received by the spouse of a living
- 1205 retiree because of the retiree's having been employed in a community property state are not

1206 deductible as retirement income of such spouse.

1207 (e) For purposes of Subsection (2)(g), a subtraction for an amount paid for health care
1208 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

1209 (i) for an amount that is reimbursed or funded in whole or in part by the federal
1210 government, the state, or an agency or instrumentality of the federal government or the state;
1211 and

1212 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded
1213 in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

1214 (4) (a) A subtraction for an amount described in Subsection (2)(~~k~~)(j) is allowed only
1215 if:

1216 (i) the taxpayer is a Ute tribal member; and

1217 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
1218 requirements of this Subsection (4).

1219 (b) The agreement described in Subsection (4)(a):

1220 (i) may not:

1221 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

1222 (B) provide a subtraction under this section greater than or different from the
1223 subtraction described in Subsection (2)(~~k~~)(j); or

1224 (C) affect the power of the state to establish rates of taxation; and

1225 (ii) shall:

1226 (A) provide for the implementation of the subtraction described in Subsection
1227 (2)(~~k~~)(j);

1228 (B) be in writing;

1229 (C) be signed by:

1230 (I) the governor; and

1231 (II) the chair of the Business Committee of the Ute tribe;

1232 (D) be conditioned on obtaining any approval required by federal law; and

1233 (E) state the effective date of the agreement.

1234 (c) (i) The governor shall report to the commission by no later than February 1 of each
1235 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
1236 in effect.

1237 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
1238 subtraction permitted under Subsection (2)~~(k)~~(j) is not allowed for taxable years beginning on
1239 or after the January 1 following the termination of the agreement.

1240 (d) For purposes of Subsection (2)~~(k)~~(j) and in accordance with Title 63, Chapter 46a,
1241 Utah Administrative Rulemaking Act, the commission may make rules:

1242 (i) for determining whether income is derived from a source within the Uintah and
1243 Ouray Reservation; and

1244 (ii) that are substantially similar to how adjusted gross income derived from Utah
1245 sources is determined under Section 59-10-117.

1246 (5) (a) For purposes of this Subsection (5), "Form 8814" means:

1247 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
1248 Interest and Dividends; or

1249 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
1250 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
1251 2000 Form 8814 if for purposes of federal individual income taxes the information contained
1252 on 2000 Form 8814 is reported on a form other than Form 8814; and

1253 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
1254 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
1255 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
1256 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
1257 8814.

1258 (b) The amount of a child's income added to adjusted gross income under Subsection
1259 (1)(c) is equal to the difference between:

1260 (i) the lesser of:

1261 (A) the base amount specified on Form 8814; and

1262 (B) the sum of the following reported on Form 8814:

1263 (I) the child's taxable interest;

1264 (II) the child's ordinary dividends; and

1265 (III) the child's capital gain distributions; and

1266 (ii) the amount not taxed that is specified on Form 8814.

1267 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences

1268 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be
1269 added to federal taxable income of a resident or nonresident individual if, as annually
1270 determined by the commission:

1271 (a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the
1272 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
1273 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

1274 (b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose
1275 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
1276 this state:

1277 (i) the entity; or

1278 (ii) (A) the state in which the entity is located; or

1279 (B) the District of Columbia, if the entity is located within the District of Columbia.

1280 Section 18. Section **59-10-201** is amended to read:

1281 **59-10-201. Taxation of resident trusts and estates.**

1282 (1) A tax determined in accordance with the rates prescribed by Section 59-10-104 for
1283 individuals filing separately is imposed for each taxable year on the state taxable income of
1284 each resident estate or trust, except for trusts taxed as corporations.

1285 (2) A resident estate or trust shall be allowed the credit provided in Section
1286 59-10-1003, relating to an income tax imposed by another state, except that the limitation shall
1287 be computed by reference to the taxable income of the estate or trust.

1288 (3) The property of the [~~trust~~] Utah Educational Savings Plan Trust established in Title
1289 53B, Chapter 8a, Higher Education Savings Incentive Program, and its income from operations
1290 and investments are exempt from all taxation by the state under this chapter.

1291 Section 19. Section **59-10-202** is amended to read:

1292 **59-10-202. Additions to and subtractions from federal taxable income of a**
1293 **resident or nonresident estate or trust.**

1294 (1) There shall be added to federal taxable income of a resident or nonresident estate or
1295 trust:

1296 (a) the amount of any income tax imposed by this or any predecessor Utah individual
1297 income tax law and the amount of any income tax imposed by the laws of another state, the
1298 District of Columbia, or a possession of the United States, to the extent deducted from federal

1299 adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal
1300 taxable income;

1301 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3) of the
1302 Internal Revenue Code, to the extent deductible under Section 62(a)(8) of the Internal Revenue
1303 Code in determining adjusted gross income;

1304 (c) except as provided in Subsection (3), for taxable years beginning on or after
1305 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after
1306 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
1307 one or more of the following entities:

1308 (i) a state other than this state;

1309 (ii) the District of Columbia;

1310 (iii) a political subdivision of a state other than this state; or

1311 (iv) an agency or instrumentality of an entity described in Subsections (1)(c)(i) through
1312 (iii);

1313 (d) any portion of federal taxable income for a taxable year if that federal taxable
1314 income is derived from stock:

1315 (i) in an S corporation; and

1316 (ii) that is held by an electing small business trust; [~~and~~]

1317 (e) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
1318 Incentive Program, from the account of a resident or nonresident estate or trust that is an
1319 account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is
1320 withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or
1321 trust that is the account owner:

1322 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and

1323 (ii) is subtracted by the resident or nonresident estate or trust:

1324 (A) that is the account owner; and

1325 (B) in accordance with Subsection (2)(j);

1326 (f) the amount withdrawn from an other state Section 529 college savings plan, from
1327 the account of a resident or nonresident estate or trust that owns the account, for the taxable
1328 year for which the amount is withdrawn, if that amount withdrawn from the account of the
1329 resident or nonresident estate or trust that owns the account:

1330 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and

1331 (ii) is subtracted by the resident or nonresident estate or trust:

1332 (A) that owns the account; and

1333 (B) in accordance with Subsection (2)(k); and

1334 [~~(e)~~] (g) any fiduciary adjustments required by Section 59-10-210.

1335 (2) There shall be subtracted from federal taxable income of a resident or nonresident
1336 estate or trust:

1337 (a) the interest or a dividend on obligations or securities of the United States and its
1338 possessions or of any authority, commission, or instrumentality of the United States, to the
1339 extent that interest or dividend is included in gross income for federal income tax purposes for
1340 the taxable year but exempt from state income taxes under the laws of the United States, but
1341 the amount subtracted under this Subsection (2) shall be reduced by any interest on
1342 indebtedness incurred or continued to purchase or carry the obligations or securities described
1343 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
1344 income described in this Subsection (2) to the extent that such expenses, including amortizable
1345 bond premiums, are deductible in determining federal taxable income;

1346 (b) 1/2 of the net amount of any income tax paid or payable to the United States after
1347 all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the
1348 same taxable year;

1349 (c) income of an irrevocable resident trust if:

1350 (i) the income would not be treated as state taxable income derived from Utah sources
1351 under Section 59-10-204 if received by a nonresident trust;

1352 (ii) the trust first became a resident trust on or after January 1, 2004;

1353 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
1354 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

1355 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

1356 (v) the amount subtracted under this Subsection (2) is reduced to the extent the settlor
1357 or any other person is treated as an owner of any portion of the trust under Subtitle A,
1358 Subchapter J, Subpart E of the Internal Revenue Code; and

1359 (vi) the amount subtracted under this Subsection (2) is reduced by any interest on
1360 indebtedness incurred or continued to purchase or carry the assets generating the income

1361 described in this Subsection (2), and by any expenses incurred in the production of income
1362 described in this Subsection (2), to the extent that those expenses, including amortizable bond
1363 premiums, are deductible in determining federal taxable income;

1364 (d) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or
1365 nonresident estate or trust derived from a deceased Ute tribal member:

1366 (i) during a time period that the Ute tribal member resided on homesteaded land
1367 diminished from the Uintah and Ouray Reservation; and

1368 (ii) from a source within the Uintah and Ouray Reservation;

1369 (e) (i) for taxable years beginning on or after January 1, 2003, the total amount of a
1370 resident or nonresident estate's or trust's short-term capital gain or long-term capital gain on a
1371 capital gain transaction:

1372 (A) that occurs on or after January 1, 2003;

1373 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:

1374 (I) to purchase qualifying stock in a Utah small business corporation; and

1375 (II) within a 12-month period after the day on which the capital gain transaction occurs;

1376 and

1377 (C) if, prior to the purchase of the qualifying stock described in Subsection
1378 (2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in
1379 the Utah small business corporation that issued the qualifying stock; and

1380 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1381 commission may make rules:

1382 (A) defining the term "gross proceeds"; and

1383 (B) for purposes of Subsection (2)(e)(i)(C), prescribing the circumstances under which
1384 a resident or nonresident estate or trust has an ownership interest in a Utah small business
1385 corporation;

1386 (f) for the taxable year beginning on or after January 1, 2005, but beginning on or
1387 before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or
1388 trust that is derived from a deceased qualifying military servicemember:

1389 (i) for service:

1390 (A) as a qualifying military servicemember; or

1391 (B) under an order into active service in accordance with Section 39-1-5; and

- 1392 (ii) to the extent that income is included in total income on that resident or nonresident
1393 estate's or trust's federal income tax return for estates and trusts for that taxable year;
- 1394 (g) any amount:
- 1395 (i) received by a resident or nonresident estate or trust;
- 1396 (ii) that constitutes a refund of taxes imposed by:
- 1397 (A) a state; or
- 1398 (B) the District of Columbia; and
- 1399 (iii) to the extent that amount is included in total income on that resident or nonresident
1400 estate's or trust's federal tax return for estates and trusts for that taxable year;
- 1401 (h) the amount of a railroad retirement benefit:
- 1402 (i) paid:
- 1403 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
1404 seq.;
- 1405 (B) to a resident or nonresident estate or trust derived from a deceased resident or
1406 nonresident individual; and
- 1407 (C) for the taxable year; and
- 1408 (ii) to the extent that railroad retirement benefit is included in total income on that
1409 resident or nonresident estate's or trust's federal tax return for estates and trusts;
- 1410 (i) an amount:
- 1411 (i) received by a resident or nonresident estate or trust if that amount is derived from a
1412 deceased enrolled member of an American Indian tribe; and
- 1413 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
1414 part on that amount in accordance with:
- 1415 (A) federal law;
- 1416 (B) a treaty; or
- 1417 (C) a final decision issued by a court of competent jurisdiction; [~~and~~]
- 1418 (j) subject to Subsection (1)(e), the amount of a qualified investment as defined in
1419 Section 53B-8a-102 that:
- 1420 (i) a resident or nonresident estate or trust that is an account owner as defined in
1421 Section 53B-8a-102 makes during the taxable year;
- 1422 (ii) the resident or nonresident estate or trust described in Subsection (2)(j)(i) does not

1423 deduct on a federal tax return for estates and trusts; and
1424 (iii) does not exceed the maximum amount of the qualified investment that may be
1425 subtracted from federal taxable income for a taxable year in accordance with Subsections
1426 53B-8a-106(1)(e) and (f):
1427 (k) subject to Subsection (1)(f), the amount of an investment in an other state Section
1428 529 college savings plan that:
1429 (i) a resident or nonresident estate or trust that owns the account makes during the
1430 taxable year:
1431 (ii) the resident or nonresident estate or trust described in Subsection (2)(k)(i) does not
1432 deduct on a federal tax return for estates and trusts; and
1433 (iii) does not exceed the maximum amount that may be subtracted from federal taxable
1434 income for a taxable year in accordance with Subsections 53B-8a-106(1)(e) and (f) for
1435 purposes of a qualified investment in the Utah Educational Savings Plan Trust; and
1436 [(f)] (l) any fiduciary adjustments required by Section 59-10-210.
1437 (3) Notwithstanding Subsection (1)(c), interest from bonds, notes, and other evidences
1438 of indebtedness issued by an entity described in Subsections (1)(c)(i) through (iv) may not be
1439 added to federal taxable income of a resident or nonresident estate or trust if, as annually
1440 determined by the commission:
1441 (a) for an entity described in Subsection (1)(c)(i) or (ii), the entity and all of the
1442 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
1443 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
1444 (b) for an entity described in Subsection (1)(c)(iii) or (iv), the following do not impose
1445 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
1446 this state:
1447 (i) the entity; or
1448 (ii) (A) the state in which the entity is located; or
1449 (B) the District of Columbia, if the entity is located within the District of Columbia.
1450 (4) (a) A subtraction for an amount described in Subsection (2)(d) is allowed only if:
1451 (i) the income is derived from a deceased Ute tribal member; and
1452 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
1453 requirements of this Subsection (4).

- 1454 (b) The agreement described in Subsection (4)(a):
- 1455 (i) may not:
- 1456 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 1457 (B) provide a subtraction under this section greater than or different from the
- 1458 subtraction described in Subsection (2)(d); or
- 1459 (C) affect the power of the state to establish rates of taxation; and
- 1460 (ii) shall:
- 1461 (A) provide for the implementation of the subtraction described in Subsection (2)(d);
- 1462 (B) be in writing;
- 1463 (C) be signed by:
- 1464 (I) the governor; and
- 1465 (II) the chair of the Business Committee of the Ute tribe;
- 1466 (D) be conditioned on obtaining any approval required by federal law; and
- 1467 (E) state the effective date of the agreement.
- 1468 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 1469 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
- 1470 in effect.
- 1471 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 1472 subtraction permitted under Subsection (2)(d) is not allowed for taxable years beginning on or
- 1473 after the January 1 following the termination of the agreement.
- 1474 (d) For purposes of Subsection (2)(d) and in accordance with Title 63, Chapter 46a,
- 1475 Utah Administrative Rulemaking Act, the commission may make rules:
- 1476 (i) for determining whether income is derived from a source within the Uintah and
- 1477 Ouray Reservation; and
- 1478 (ii) that are substantially similar to how adjusted gross income derived from Utah
- 1479 sources is determined under Section 59-10-117.
- 1480 Section 20. Section **59-10-1015.1** is enacted to read:
- 1481 **59-10-1015.1. Utah Educational Savings Plan tax credit.**
- 1482 (1) As used in this section:
- 1483 (a) "Account owner" is as defined in Section 53B-8a-102.
- 1484 (b) "Higher education costs" is as defined in Section 53B-8a-102.

1485 (c) "Maximum amount of a qualified investment for the taxable year" means, for a
1486 taxable year:

1487 (i) for a claimant that is an account owner, if that claimant is a person other than a
1488 husband and wife who file a single return jointly, the maximum amount of a qualified
1489 investment:

1490 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

1491 (B) increased or decreased for that taxable year in accordance with Subsection
1492 53B-8a-106(1)(f); or

1493 (ii) for claimants who are husband and wife account owners who file a single return
1494 jointly, the maximum amount of a qualified investment:

1495 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

1496 (B) increased or decreased for that taxable year in accordance with Subsection
1497 53B-8a-106(1)(f).

1498 (d) "Qualified investment" is as defined in Section 53B-8a-102.

1499 (2) For taxable years beginning on or after January 1, 2008, a claimant that is an
1500 account owner may claim a nonrefundable tax credit equal to the product of:

1501 (a) the lesser of:

1502 (i) the amount of a qualified investment the claimant:

1503 (A) makes during the taxable year; and

1504 (B) does not deduct on the claimant's federal individual income tax return; or

1505 (ii) the maximum amount of a qualified investment for the taxable year if the amount

1506 described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified investment

1507 for the taxable year; and

1508 (b) 7%.

1509 (3) A tax credit under this section may not be carried forward or carried back.

1510 Section 21. Section **59-10-1015.2** is enacted to read:

1511 **59-10-1015.2. Other state Section 529 college savings plan tax credit.**

1512 (1) As used in this section:

1513 (a) "Higher education costs" is as defined in Section 53B-8a-102.

1514 (b) "Maximum investment" means, for a taxable year:

1515 (i) for a claimant that owns an account for an investment in an other state Section 529

1516 college savings plan, if that claimant is a person other than a husband and wife who file a
1517 single return jointly, the maximum amount of a qualified investment as defined in Section
1518 53B-8a-102:

1519 (A) listed in Subsection 53B-8a-106(1)(e)(ii) for purposes of a qualified investment in
1520 the Utah Educational Savings Plan Trust; and

1521 (B) increased or decreased for that taxable year in accordance with Subsection
1522 53B-8a-106(1)(f); or

1523 (ii) for claimants who are husband and wife owners of an account for an investment in
1524 an other state Section 529 college savings plan who file a single return jointly, the maximum
1525 amount of a qualified investment:

1526 (A) listed in Subsection 53B-8a-106(1)(e)(iii) for purposes of a qualified investment in
1527 the Utah Educational Savings Plan Trust; and

1528 (B) increased or decreased for that taxable year in accordance with Subsection
1529 53B-8a-106(1)(f).

1530 (2) For taxable years beginning on or after January 1, 2008, a claimant that owns an
1531 account for an investment in an other state Section 529 college savings plan may claim a
1532 nonrefundable tax credit equal to the product of:

1533 (a) the lesser of:

1534 (i) the amount of the investment the claimant:

1535 (A) makes during the taxable year; and

1536 (B) does not deduct on the claimant's federal individual income tax return; or

1537 (ii) the maximum investment for the taxable year if the amount described in Subsection

1538 (2)(a)(i) is greater than the maximum investment for the taxable year; and

1539 (b) 7%.

1540 (3) A tax credit under this section may not be carried forward or carried back.

1541 Section 22. Section **59-10-1204** is amended to read:

1542 **59-10-1204. Additions to and subtractions from adjusted gross income of a**
1543 **resident or nonresident individual.**

1544 (1) In calculating state taxable income for purposes of this part, the following amounts
1545 shall be added to the adjusted gross income of a resident or nonresident individual:

1546 (a) the amount described in Subsection 59-10-114(1)(a), if that amount is deducted by

1547 a resident or nonresident estate or trust in determining federal taxable income;

1548 (b) the lump sum distribution described in Subsection 59-10-114(1)(b);

1549 (c) subject to Subsection 59-10-114(5), the amount described in Subsection

1550 59-10-114(1)(c);

1551 (d) a withdrawal described in Subsection 59-10-114(1)(e);

1552 (e) the amount described in Subsection 59-10-114(1)(f);

1553 (f) subject to Subsection 59-10-114(6), the interest described in Subsection

1554 59-10-114(1)(g);

1555 (g) a distribution described in Subsection 59-10-114(1)(h);

1556 (h) a distribution described in Subsection 59-10-114(1)(i); ~~or~~

1557 (i) an expense described in Subsection 59-10-114(1)(j)~~[-];~~ or

1558 (j) the amount described in Subsection 59-10-114(1)(k).

1559 (2) In calculating state taxable income for purposes of this part, the following amounts

1560 shall be subtracted from the adjusted gross income of a resident or nonresident individual:

1561 (a) the interest or dividends described in Subsection 59-10-114(2)(a);

1562 (b) subject to Subsection 59-10-114(4), the amount described in Subsection

1563 59-10-114(2)~~[(k)]~~(j);

1564 (c) an amount described in Subsection 59-10-114(2)~~[(n)]~~(m);

1565 (d) the amount described in Subsection 59-10-114(2)~~[(o)]~~(n); and

1566 (e) an amount described in Subsection 59-10-114(2)~~[(p)]~~(o).

1567 Section 23. **Effective date.**

1568 This bill takes effect for taxable years beginning on or after January 1, 2008.

Legislative Review Note
as of 2-20-07 2:16 PM

Office of Legislative Research and General Counsel

Fiscal Note**S.B. 177 - Income Tax Credits, Additions, and Subtractions for College Savings**

2007 General Session

State of Utah

State Impact

Enactment of this bill will result in a loss of approximately \$1 million revenue in Education Fund revenue annually beginning with FY 2009.

	<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	\$0	(\$1,000,000)
Total	\$0	\$0	\$0	\$0	\$0	(\$1,000,000)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Contributors to 529 plans other than the Utah Educational Savings Plans will be eligible for a tax deduction.