

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

4                   2007 GENERAL SESSION

5                   STATE OF UTAH

6                   **Chief Sponsor: Gregory S. Bell**

7                   House Sponsor: Stephen H. Urquhart

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8  
9                   **LONG TITLE**

10                  **General Description:**

11                  This bill amends the Corporate Franchise and Income Taxes chapter and the Individual  
12                  Income Tax Act relating to additions to and subtractions from income for higher  
13                  education savings and to provide a tax credit for higher education savings.

14                  **Highlighted Provisions:**

15                  This bill:

- 16                  ▶ provides and modifies definitions;
- 17                  ▶ addresses the maximum amount of a qualified investment in the Utah Educational  
18                  Savings Plan Trust that a person, estate, or trust may:
  - 19                          • subtract from federal taxable income; or
  - 20                          • use as the basis for claiming a tax credit;
- 21                  ▶ modifies and clarifies the amount of a qualified investment in the Utah Educational  
22                  Savings Plan Trust that a corporation may subtract from federal taxable income;
  - 23                          ▶ modifies an addition to income for a corporation or a resident or nonresident  
24                          individual who is an account owner under the Utah Educational Savings Plan Trust  
25                          for amounts not expended for higher education costs under certain circumstances;
  - 26                          ▶ repeals an individual income tax subtraction for a qualified investment in the Utah  
27                          Educational Savings Plan Trust;



28           ▶ provides that a resident or nonresident estate or trust may subtract certain qualified  
29 investments in the Utah Educational Savings Plan Trust from federal taxable  
30 income;

31           ▶ requires a resident or nonresident estate or trust that is an account owner under the  
32 Utah Educational Savings Plan Trust to add to federal taxable income amounts not  
33 expended for higher education costs under certain circumstances;

34           ▶ allows an individual income tax and single rate individual income tax credit for  
35 qualified investments in the Utah Educational Savings Plan Trust Fund; and

36           ▶ makes technical changes.

37 **Monies Appropriated in this Bill:**

38           None

39 **Other Special Clauses:**

40           This bill has retrospective operation for taxable years beginning on or after January 1,  
41 2007.

42 **Utah Code Sections Affected:**

43 AMENDS:

44           **53B-8a-102**, as last amended by Chapter 109, Laws of Utah 2005

45           **53B-8a-103**, as last amended by Chapter 109, Laws of Utah 2005

46           **53B-8a-104**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session

47           **53B-8a-105**, as last amended by Chapter 109, Laws of Utah 2005

48           **53B-8a-106**, as last amended by Chapter 223, Laws of Utah 2006

49           **53B-8a-107**, as last amended by Chapter 109, Laws of Utah 2005

50           **53B-8a-108**, as last amended by Chapter 109, Laws of Utah 2005

51           **53B-8a-109**, as last amended by Chapter 109, Laws of Utah 2005

52           **53B-8a-111**, as enacted by Chapter 4, Laws of Utah 1996, Second Special Session

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

54           **53B-8a-113**, as last amended by Chapter 109, Laws of Utah 2005

55           **59-7-105**, as last amended by Chapter 109, Laws of Utah 2005

56           **59-7-106**, as last amended by Chapter 211, Laws of Utah 2002

57           **59-10-103**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session

58           **59-10-114**, as last amended by Chapter 2, Laws of Utah 2006, Fourth Special Session

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

60           **59-10-1204**, as enacted by Chapter 2, Laws of Utah 2006, Fourth Special Session

61 ENACTS:

62           **59-10-1015.1**, Utah Code Annotated 1953



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

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

66           **53B-8a-102. Definitions.**

67           As used in this chapter:

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

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

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

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

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

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

84           (7) "Endowment fund" means the endowment fund established under Section  
85 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan Trust.

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

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

94 (10) "Program administrator" means the administrator of the Utah Educational Savings  
95 Plan Trust appointed by the board to administer and manage the Utah Educational Savings Plan  
96 Trust.

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

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

101 [~~12~~] (13) "Tuition and fees" means the quarterly or semester charges imposed to  
102 attend an institution of higher education and required as a condition of enrollment.

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

105 [~~14~~] (15) "Vested account" means an account agreement which has been in full force  
106 and effect during eight continuous years of residency of the beneficiary in the state while  
107 participating in the Utah Educational Savings Plan Trust.

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

109 **53B-8a-103. Creation of Utah Educational Savings Plan Trust.**

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

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

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

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

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

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

117 (d) invest moneys within the program fund:

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

120 (B) in mutual funds registered under the Investment Company Act of 1940, consistent

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

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

146 **53B-8a-104. Office facilities, clerical, and administrative support for the Utah**

147 **Educational Savings Plan Trust.**

148 (1) The board shall provide to the Utah Educational Savings Plan Trust, by agreement,

149 administrative and clerical support and office facilities and space.

150 (2) Reasonable charges or fees may be levied against the Utah Educational Savings

151 Plan Trust pursuant to the agreement for the services provided by the board.

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

153 **53B-8a-105. Additional powers of board as to the Utah Educational Savings Plan**  
154 **Trust.**

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

158 (1) engage:

159 (a) one or more investment advisors, registered under the Investment Advisors Act of  
160 1940, with at least 5,000 advisory clients and at least \$1,000,000,000 under management, to  
161 provide investment advice to the board with respect to the assets held in each account;

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

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

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

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

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

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

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

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

182 (8) solicit and accept for the benefit of the endowment fund gifts, grants, and other

183 moneys, including general fund moneys from the state and grants from any federal or other  
184 governmental agency;

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

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

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

191 **53B-8a-106. Account agreements.**

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

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

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

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

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

208 [~~(d) The~~] (e) Subject to Subsection (1)(f), the maximum amount of [investments] a  
209 qualified investment that may be subtracted from federal taxable income [of a resident or  
210 nonresident individual under Subsection 59-10-114(2)(i) shall be \$1,510] of a resident or  
211 nonresident estate or trust for a taxable year in accordance with Section 59-10-202 or used as  
212 the basis for claiming a tax credit by a resident or nonresident individual in accordance with  
213 Section 59-10-1015.1 or 59-10-1206, is:

214 (i) for a resident or nonresident estate or trust that is an account owner, \$1,560 for each  
215 individual beneficiary for the [2005 calendar year and an amount adjusted annually thereafter  
216 to reflect increases in the Consumer Price Index.] taxable year beginning on or after January 1,  
217 2006, but beginning on or before December 31, 2006;

218 (ii) for a resident or nonresident individual that is an account owner, other than a  
219 husband and wife who file a single return jointly, \$1,560 for each individual beneficiary for the  
220 taxable year beginning on or after January 1, 2006, but beginning on or before December 31,  
221 2006;

222 (iii) for a husband and wife who are account owners and file a single return jointly,  
223 \$3,120 for each individual beneficiary:

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

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

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

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

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

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

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

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

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

244 (II) two.



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

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

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

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

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

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

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

256 (II) Section 59-10-1206.

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

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

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

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

268 (4) Each account agreement shall provide that:

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

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

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

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

276 will:

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

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

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

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

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

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

290 (8) Each account agreement shall provide that:

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

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

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

297 **53B-8a-107. Program, endowment, and administrative funds -- Investment and**  
298 **payments from funds.**

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

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

306 (c) Transfers may be made from the program fund to the administrative fund to pay

307 operating costs:

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

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

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

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

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

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

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

333 (c) (i) Except as provided in Subsection (2)(c)(ii), at the time any payments or  
334 disbursements for higher education costs are made from the Utah Educational Savings Plan  
335 Trust to any institution of higher education under an account agreement, the Utah Educational  
336 Savings Plan Trust shall add to that payment from endowment fund income a pro rata portion  
337 of the amount calculated pursuant to Subsection (2)(b), which shall be transferred directly to

338 the institution of higher education simultaneously with the payment made from the program  
339 fund and shall be used for payment of the higher education costs of the beneficiary, but not to  
340 exceed the amount which, in combination with the current payment due from the program  
341 fund, equals the beneficiary's higher education costs for the current period of enrollment.

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

345 (3) Beginning on April 1, 2005:

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

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

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

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

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

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

360 **53B-8a-108. Cancellation of agreements.**

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

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

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

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

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

- 369 (a) the death of the beneficiary; or  
370 (b) the permanent disability or mental incapacity of the beneficiary.  
371 (4) The board shall make rules for the disposition of monies transferred to an account  
372 pursuant to Subsection 53A-8a-107(2)(c)(ii) and the earnings on those monies when an account  
373 agreement is cancelled.

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

375 **53B-8a-109. Repayment and ownership of payments and investment income --**  
376 **Transfer of ownership rights.**

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

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

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

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

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

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

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

390 **53B-8a-111. Annual audited financial report to governor, Legislature, and state**  
391 **auditor.**

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

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

399 (3) The annual audit shall be supplemented by the following information prepared by

400 the board:

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

402 (b) a summary of the benefits provided by the Utah Educational Savings Plan Trust  
403 including the number of participants and beneficiaries in the Utah Educational Savings Plan  
404 Trust; and

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

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

408 **53B-8a-112. Tax considerations.**

409 (1) For tax purposes the property of the Utah Educational Savings Plan Trust and its  
410 income are governed by Sections 59-7-105, 59-7-106, 59-10-114, [~~and~~] 59-10-201, and  
411 59-10-202.

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

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

416 **53B-8a-113. Property rights to assets in Utah Educational Savings Plan Trust.**

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

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

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

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

426 **59-7-105. Additions to unadjusted income.**

427 In computing adjusted income the following amounts shall be added to unadjusted  
428 income:

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

- 431 (2) the amount of any deduction taken on a corporation's federal return for taxes paid  
432 by a corporation:
- 433 (a) to Utah for taxes imposed by this chapter; and  
434 (b) to another state of the United States, a foreign country, a United States possession,  
435 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or  
436 exercising its corporate franchise, including income, franchise, corporate stock and business  
437 and occupation taxes;
- 438 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and  
439 (2)(a);
- 440 (4) capital losses that have been deducted on a Utah corporate return in previous years;  
441 (5) any deduction on the federal return that has been previously deducted on the Utah  
442 return;
- 443 (6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;  
444 (7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated  
445 technological equipment;
- 446 (8) charitable contributions, to the extent deducted on the federal return when  
447 determining federal taxable income;
- 448 (9) the amount of gain or loss determined under Section 59-7-114 relating to a target  
449 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already  
450 been included in the unadjusted income of the target corporation;
- 451 (10) the amount of gain or loss determined under Section 59-7-115 relating to  
452 corporations treated for federal purposes as having disposed of its assets under Section 336(e),  
453 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted  
454 income of the target corporation;
- 455 (11) adjustments to gains, losses, depreciation expense, amortization expense, and  
456 similar items due to a difference between basis for federal purposes and basis as computed  
457 under Section 59-7-107; and
- 458 (12) the amount ~~[disbursed to]~~ withdrawn under Title 53B, Chapter 8a, Higher  
459 Education Savings Incentive Program, from the account of a corporation that is an account  
460 owner [under Title 53B, Chapter 8a, Higher Education Savings Incentive Program, to the  
461 extent deducted on a Utah return in previous years and not used for qualified higher education

462 ~~costs of the beneficiary, in the year in which the amount is disbursed.] as defined in Section~~  
463 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn  
464 from the account of the corporation that is the account owner:

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

466 (b) is subtracted by the corporation:

467 (i) that is the account owner; and

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

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

470 **59-7-106. Subtractions from unadjusted income.**

471 In computing adjusted income the following amounts shall be subtracted from  
472 unadjusted income:

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

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

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

479 (a) deducted in the year incurred; or

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

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

484 (4) the decrease in qualified research and basic research expense deduction for federal  
485 income tax purposes due to claiming the federal research and development credit under Section  
486 41, Internal Revenue Code;

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

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

492 (7) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and



493 (2)(b);

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

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

501 (10) charitable contributions, to the extent allowed as a subtraction under Section  
502 59-7-109;

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

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

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

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

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

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

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

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

541 (16) any interest expense not deducted on the federal corporate return under Section  
542 265(b) or 291(e), Internal Revenue Code;

543 (17) 100% of the dividends received from subsidiaries which are insurance companies  
544 exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"  
545 as defined by Subsection 59-7-101(7); and

546 ~~[(18) any amount included in unadjusted income that was derived from money paid by~~  
547 ~~the taxpayer to the program fund and investment income earned on those payments under Title~~  
548 ~~53B, Chapter 8a, Higher Education Savings Incentive Program, that is included in federal~~  
549 ~~taxable income, but only when the monies are used for qualified higher education costs of the~~  
550 ~~beneficiary.]~~

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

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

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

557 (c) does not exceed the maximum amount of the qualified investment that may be  
558 subtracted from unadjusted income for a taxable year in accordance with Subsections  
559 53B-8a-106(1)(d) and (f).

560 Section 14. Section **59-10-103** is amended to read:

561 **59-10-103. Definitions.**

562 (1) As used in this chapter:

563 (a) "Adjusted gross income":

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

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

568 (b) "Adoption expenses" means:

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

571 (ii) any welfare agency fees or costs;

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

573 (iv) any legal fees or costs; or

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

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

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

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

579 (iii) is not enrolled in:

580 (A) an education program for students with disabilities that is authorized under Section  
581 53A-15-301; or

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

583 (d) (i) For purposes of Subsection 59-10-114(2)[(†)](k), "capital gain transaction"  
584 means a transaction that results in a:

585 (A) short-term capital gain; or

586 (B) long-term capital gain.

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

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

591 (f) "Corporation" includes:

592 (i) associations;

593 (ii) joint stock companies; and

594 (iii) insurance companies.

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

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

599 (I) autism;

600 (II) deafness;

601 (III) preschool developmental delay;

602 (IV) dual sensory impairment;

603 (V) hearing impairment;

604 (VI) intellectual disability;

605 (VII) multidisability;

606 (VIII) orthopedic impairment;

607 (IX) other health impairment;

608 (X) traumatic brain injury; or

609 (XI) visual impairment;

610 (B) is not receiving residential services from:

611 (I) the Division of Services for People with Disabilities created under Section  
612 62A-5-102; or

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

614 and

615 (C) is enrolled in:

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

- 617 53A-15-301; or
- 618 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
- 619 or
- 620 (ii) is identified under guidelines of the Department of Health as qualified for:
- 621 (A) Early Intervention; or
- 622 (B) Infant Development Services.
- 623 (h) "Distributable net income" is as defined in Section 643, Internal Revenue Code.
- 624 (i) "Employee" is as defined in Section 59-10-401.
- 625 (j) "Employer" is as defined in Section 59-10-401.
- 626 (k) "Federal taxable income":
- 627 (i) for a resident or nonresident individual, means taxable income as defined by Section
- 628 63, Internal Revenue Code; or
- 629 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
- 630 (b), Internal Revenue Code.
- 631 (l) "Fiduciary" means:
- 632 (i) a guardian;
- 633 (ii) a trustee;
- 634 (iii) an executor;
- 635 (iv) an administrator;
- 636 (v) a receiver;
- 637 (vi) a conservator; or
- 638 (vii) any person acting in any fiduciary capacity for any individual.
- 639 (m) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
- 640 homesteaded land that was held to have been diminished from the Uintah and Ouray
- 641 Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).
- 642 (n) "Individual" means a natural person and includes aliens and minors.
- 643 (o) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate
- 644 all or part of the trust without the consent of a person who has a substantial beneficial interest
- 645 in the trust and the interest would be adversely affected by the exercise of the settlor's power to
- 646 revoke or terminate all or part of the trust.
- 647 (p) For purposes of Subsection 59-10-114(2)[~~(h)~~](k), "long-term capital gain" is as

648 defined in Section 1222, Internal Revenue Code.

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

650 (r) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a  
651 resident estate or trust.

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

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

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

657 (I) a trust;

658 (II) an estate; or

659 (III) a corporation.

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

662 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or  
663 organization described in Subsection (1)(s)(i).

664 (t) "Qualifying military servicemember" means a member of:

665 (i) The Utah Army National Guard;

666 (ii) The Utah Air National Guard; or

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

668 (A) The Army Reserve;

669 (B) The Naval Reserve;

670 (C) The Air Force Reserve;

671 (D) The Marine Corps Reserve; or

672 (E) The Coast Guard Reserve.

673 (u) "Qualifying stock" means stock that is:

674 (i) (A) common; or

675 (B) preferred;

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

677 (A) a resident or nonresident individual; or

678 (B) a partnership if the resident or nonresident individual making a subtraction from

679 federal taxable income in accordance with Subsection 59-10-114(2)(~~+~~)(k):  
680 (I) was a partner when the stock was issued; and  
681 (II) remains a partner until the last day of the taxable year for which the resident or  
682 nonresident individual makes the subtraction from federal taxable income in accordance with  
683 Subsection 59-10-114(2)(~~+~~)(k); and  
684 (iii) issued:  
685 (A) by a Utah small business corporation;  
686 (B) on or after January 1, 2003; and  
687 (C) for:  
688 (I) money; or  
689 (II) other property, except for stock or securities.  
690 (v) (i) "Resident individual" means:  
691 (A) an individual who is domiciled in this state for any period of time during the  
692 taxable year, but only for the duration of the period during which the individual is domiciled in  
693 this state; or  
694 (B) an individual who is not domiciled in this state but:  
695 (I) maintains a permanent place of abode in this state; and  
696 (II) spends in the aggregate 183 or more days of the taxable year in this state.  
697 (ii) For purposes of Subsection (1)(v)(i)(B), a fraction of a calendar day shall be  
698 counted as a whole day.  
699 (w) "Resident estate" or "resident trust" is as defined in Section 75-7-103.  
700 (x) For purposes of Subsection 59-10-114(2)(~~+~~)(k), "short-term capital gain" is as  
701 defined in Section 1222, Internal Revenue Code.  
702 (y) "Taxable income" or "state taxable income":  
703 (i) subject to Subsection 59-10-302(2), for a resident individual other than a resident  
704 individual described in Subsection (1)(y)(iii), means the resident individual's federal taxable  
705 income after making the:  
706 (A) additions and subtractions required by Section 59-10-114; and  
707 (B) adjustments required by Section 59-10-115;  
708 (ii) for a nonresident individual other than a nonresident individual described in  
709 Subsection (1)(y)(iii), is as defined in Section 59-10-116;

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

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

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

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

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

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

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

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

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

723 (B) except as provided in Subsection (1)(bb)(ii), meets the requirements of Section  
724 1244(c)(1)(C), Internal Revenue Code; and

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

726 (ii) Notwithstanding Subsection (1)(bb)(i)(B), the time period described in Section  
727 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a  
728 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the  
729 resident or nonresident individual makes a subtraction from federal taxable income in  
730 accordance with Subsection 59-10-114(2)(~~h~~)(k).

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

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

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

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

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



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

745 Section 15. Section **59-10-114** is amended to read:

746 **59-10-114. Additions to and subtractions from federal taxable income of an**  
747 **individual.**

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

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

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

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

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

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

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

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

766 (i) the resident or nonresident individual did not deduct or include the amounts on the  
767 resident or nonresident individual's federal individual income tax return pursuant to Section  
768 220, Internal Revenue Code;

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

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

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

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

779 (ii) is:

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

782 (I) under this chapter; and

783 (II) filed for a taxable year beginning on or before December 31, 2006; or

784 (B) used as the basis for the resident or nonresident individual who is the account  
785 owner to claim a tax credit under this chapter:

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

790 (i) a state other than this state;

791 (ii) the District of Columbia;

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

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

795 (h) subject to Subsection (2)[~~(n)~~](m), any distribution received by a resident  
796 beneficiary of a resident trust of income that was taxed at the trust level for federal tax  
797 purposes, but was subtracted from state taxable income of the trust pursuant to Subsection  
798 59-10-202(2)(c);

799 (i) any distribution received by a resident beneficiary of a nonresident trust of  
800 undistributed distributable net income realized by the trust on or after January 1, 2004, if that  
801 undistributed distributable net income was taxed at the trust level for federal tax purposes, but  
802 was not taxed at the trust level by any state, with undistributed distributable net income

803 considered to be distributed from the most recently accumulated undistributed distributable net  
804 income; and

805 (j) any adoption expense:

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

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

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

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

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

814 (a) the interest or a dividend on obligations or securities of the United States and its  
815 possessions or of any authority, commission, or instrumentality of the United States, to the  
816 extent that interest or dividend is included in gross income for federal income tax purposes for  
817 the taxable year but exempt from state income taxes under the laws of the United States, but  
818 the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on  
819 indebtedness incurred or continued to purchase or carry the obligations or securities described  
820 in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend  
821 income described in this Subsection (2)(a) to the extent that such expenses, including  
822 amortizable bond premiums, are deductible in determining federal taxable income;

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

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

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

830 (A) paid; or

831 (B) incurred;

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

833 (iii) any year in which the resident or nonresident individual may claim the federal

834 adoption expenses credit under Section 23, Internal Revenue Code;

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

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

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

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

849 (i) for:

850 (A) the taxpayer;

851 (B) the taxpayer's spouse; and

852 (C) the taxpayer's dependents; and

853 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or  
854 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

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

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

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

865 for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is  
866 covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that  
867 covers the other spouse, and each spouse has a medical care savings account; or

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

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

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

872 ~~[(i) the amount included in federal taxable income that was derived from money paid  
873 by an account owner to the program fund under Title 53B, Chapter 8a, Higher Education  
874 Savings Incentive Program, not to exceed amounts determined under Subsection  
875 53B-8a-106(1)(d), and investment income earned on account agreements entered into under  
876 Section 53B-8a-106 that is included in federal taxable income, but only when the funds are  
877 used for qualified higher education costs of the beneficiary;]~~

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

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

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

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

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

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

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

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

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

894 and

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

896 (2)~~(f)~~(k)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in  
897 the Utah small business corporation that issued the qualifying stock; and  
898 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
899 commission may make rules:  
900 (A) defining the term "gross proceeds"; and  
901 (B) for purposes of Subsection (2)~~(f)~~(k)(i)(C), prescribing the circumstances under  
902 which a resident or nonresident individual has an ownership interest in a Utah small business  
903 corporation;  
904 ~~(m)~~ (l) for the taxable year beginning on or after January 1, 2005, but beginning on or  
905 before December 31, 2005, the first \$2,200 of income a qualifying military servicemember  
906 receives:  
907 (i) for service:  
908 (A) as a qualifying military servicemember; or  
909 (B) under an order into active service in accordance with Section 39-1-5; and  
910 (ii) to the extent that income is included in adjusted gross income on that resident or  
911 nonresident individual's federal individual income tax return for that taxable year;  
912 ~~(n)~~ (m) an amount received by a resident or nonresident individual or distribution  
913 received by a resident or nonresident beneficiary of a resident trust:  
914 (i) if that amount or distribution constitutes a refund of taxes imposed by:  
915 (A) a state; or  
916 (B) the District of Columbia; and  
917 (ii) to the extent that amount or distribution is included in adjusted gross income for  
918 that taxable year on the federal individual income tax return of the resident or nonresident  
919 individual or resident or nonresident beneficiary of a resident trust;  
920 ~~(o)~~ (n) the amount of a railroad retirement benefit:  
921 (i) paid:  
922 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et  
923 seq.;  
924 (B) to a resident or nonresident individual; and  
925 (C) for the taxable year; and  
926 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on

927 that resident or nonresident individual's federal individual income tax return for that taxable  
928 year; and

929 ~~(p)~~ (o) an amount:

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

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

933 (A) federal law;

934 (B) a treaty; or

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

936 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted  
937 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or  
938 \$4,800, except that:

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

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

945 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
946 \$25,000, the amount of the retirement income exemption that may be subtracted shall be  
947 reduced by 50 cents.

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

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

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

956 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over  
957 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

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

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

973 (4) (a) A subtraction for an amount described in Subsection (2)~~(f)~~(j) is allowed only  
974 if:

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

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

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

979 (i) may not:

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

981 (B) provide a subtraction under this section greater than or different from the  
982 subtraction described in Subsection (2)~~(f)~~(j); or

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

984 (ii) shall:

985 (A) provide for the implementation of the subtraction described in Subsection  
986 (2)~~(f)~~(j);

987 (B) be in writing;

988 (C) be signed by:



989 (I) the governor; and

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

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

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

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

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

999 (d) For purposes of Subsection (2)~~(k)~~(j) and in accordance with Title 63, Chapter 46a,  
1000 Utah Administrative Rulemaking Act, the commission may make rules:

1001 (i) for determining whether income is derived from a source within the Uintah and  
1002 Ouray Reservation; and

1003 (ii) that are substantially similar to how adjusted gross income derived from Utah  
1004 sources is determined under Section 59-10-117.

1005 (5) (a) For purposes of this Subsection (5), "Form 8814" means:

1006 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's  
1007 Interest and Dividends; or

1008 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by  
1009 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to  
1010 2000 Form 8814 if for purposes of federal individual income taxes the information contained  
1011 on 2000 Form 8814 is reported on a form other than Form 8814; and

1012 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter  
1013 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form  
1014 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income  
1015 taxes the information contained on 2000 Form 8814 is reported on a form other than Form  
1016 8814.

1017 (b) The amount of a child's income added to adjusted gross income under Subsection  
1018 (1)(c) is equal to the difference between:

1019 (i) the lesser of:

- 1020 (A) the base amount specified on Form 8814; and
- 1021 (B) the sum of the following reported on Form 8814:
- 1022 (I) the child's taxable interest;
- 1023 (II) the child's ordinary dividends; and
- 1024 (III) the child's capital gain distributions; and
- 1025 (ii) the amount not taxed that is specified on Form 8814.

1026 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences  
1027 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be  
1028 added to federal taxable income of a resident or nonresident individual if, as annually  
1029 determined by the commission:

1030 (a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the  
1031 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
1032 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

1033 (b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose  
1034 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of  
1035 this state:

- 1036 (i) the entity; or
- 1037 (ii) (A) the state in which the entity is located; or
- 1038 (B) the District of Columbia, if the entity is located within the District of Columbia.

1039 Section 16. Section **59-10-202** is amended to read:

1040 **59-10-202. Additions to and subtractions from federal taxable income of a**  
1041 **resident or nonresident estate or trust.**

1042 (1) There shall be added to federal taxable income of a resident or nonresident estate or  
1043 trust:

1044 (a) the amount of any income tax imposed by this or any predecessor Utah individual  
1045 income tax law and the amount of any income tax imposed by the laws of another state, the  
1046 District of Columbia, or a possession of the United States, to the extent deducted from federal  
1047 adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal  
1048 taxable income;

1049 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3) of the  
1050 Internal Revenue Code, to the extent deductible under Section 62(a)(8) of the Internal Revenue

1051 Code in determining adjusted gross income;

1052 (c) except as provided in Subsection (3), for taxable years beginning on or after

1053 January 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after

1054 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by

1055 one or more of the following entities:

1056 (i) a state other than this state;

1057 (ii) the District of Columbia;

1058 (iii) a political subdivision of a state other than this state; or

1059 (iv) an agency or instrumentality of an entity described in Subsections (1)(c)(i) through

1060 (iii);

1061 (d) any portion of federal taxable income for a taxable year if that federal taxable

1062 income is derived from stock:

1063 (i) in an S corporation; and

1064 (ii) that is held by an electing small business trust; ~~and~~

1065 (e) (i) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings

1066 Incentive Program, from the account of a resident or nonresident estate or trust that is an

1067 account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is

1068 withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or

1069 trust that is the account owner:

1070 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and

1071 (B) is subtracted by the resident or nonresident estate or trust:

1072 (I) that is the account owner; and

1073 (II) in accordance with Subsection (2)(j)(i); and

1074 (ii) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings

1075 Incentive Program, from the account of a resident or nonresident estate or trust that is an

1076 account owner as defined in Section 53B-8a-102, for the taxable year beginning on or after

1077 January 1, 2007, but beginning on or before December 31, 2007, if that amount withdrawn

1078 from the account of the resident or nonresident estate or trust that is the account owner:

1079 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and

1080 (B) is subtracted by the resident or nonresident estate or trust:

1081 (I) that is the account owner; and

1082           (II) in accordance with Subsection (2)(j)(ii); and  
1083           ~~(f)~~ (f) any fiduciary adjustments required by Section 59-10-210.  
1084           (2) There shall be subtracted from federal taxable income of a resident or nonresident  
1085 estate or trust:  
1086           (a) the interest or a dividend on obligations or securities of the United States and its  
1087 possessions or of any authority, commission, or instrumentality of the United States, to the  
1088 extent that interest or dividend is included in gross income for federal income tax purposes for  
1089 the taxable year but exempt from state income taxes under the laws of the United States, but  
1090 the amount subtracted under this Subsection (2) shall be reduced by any interest on  
1091 indebtedness incurred or continued to purchase or carry the obligations or securities described  
1092 in this Subsection (2), and by any expenses incurred in the production of interest or dividend  
1093 income described in this Subsection (2) to the extent that such expenses, including amortizable  
1094 bond premiums, are deductible in determining federal taxable income;  
1095           (b) 1/2 of the net amount of any income tax paid or payable to the United States after  
1096 all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the  
1097 same taxable year;  
1098           (c) income of an irrevocable resident trust if:  
1099           (i) the income would not be treated as state taxable income derived from Utah sources  
1100 under Section 59-10-204 if received by a nonresident trust;  
1101           (ii) the trust first became a resident trust on or after January 1, 2004;  
1102           (iii) no assets of the trust were held, at any time after January 1, 2003, in another  
1103 resident irrevocable trust created by the same settlor or the spouse of the same settlor;  
1104           (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);  
1105           (v) the amount subtracted under this Subsection (2) is reduced to the extent the settlor  
1106 or any other person is treated as an owner of any portion of the trust under Subtitle A,  
1107 Subchapter J, Subpart E of the Internal Revenue Code; and  
1108           (vi) the amount subtracted under this Subsection (2) is reduced by any interest on  
1109 indebtedness incurred or continued to purchase or carry the assets generating the income  
1110 described in this Subsection (2), and by any expenses incurred in the production of income  
1111 described in this Subsection (2), to the extent that those expenses, including amortizable bond  
1112 premiums, are deductible in determining federal taxable income;

1113 (d) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or  
1114 nonresident estate or trust derived from a deceased Ute tribal member:

1115 (i) during a time period that the Ute tribal member resided on homesteaded land  
1116 diminished from the Uintah and Ouray Reservation; and

1117 (ii) from a source within the Uintah and Ouray Reservation;

1118 (e) (i) for taxable years beginning on or after January 1, 2003, the total amount of a  
1119 resident or nonresident estate's or trust's short-term capital gain or long-term capital gain on a  
1120 capital gain transaction:

1121 (A) that occurs on or after January 1, 2003;

1122 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:

1123 (I) to purchase qualifying stock in a Utah small business corporation; and

1124 (II) within a 12-month period after the day on which the capital gain transaction occurs;

1125 and

1126 (C) if, prior to the purchase of the qualifying stock described in Subsection  
1127 (2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in  
1128 the Utah small business corporation that issued the qualifying stock; and

1129 (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
1130 commission may make rules:

1131 (A) defining the term "gross proceeds"; and

1132 (B) for purposes of Subsection (2)(e)(i)(C), prescribing the circumstances under which  
1133 a resident or nonresident estate or trust has an ownership interest in a Utah small business  
1134 corporation;

1135 (f) for the taxable year beginning on or after January 1, 2005, but beginning on or  
1136 before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or  
1137 trust that is derived from a deceased qualifying military servicemember:

1138 (i) for service:

1139 (A) as a qualifying military servicemember; or

1140 (B) under an order into active service in accordance with Section 39-1-5; and

1141 (ii) to the extent that income is included in total income on that resident or nonresident  
1142 estate's or trust's federal income tax return for estates and trusts for that taxable year;

1143 (g) any amount:

- 1144 (i) received by a resident or nonresident estate or trust;
- 1145 (ii) that constitutes a refund of taxes imposed by:
- 1146 (A) a state; or
- 1147 (B) the District of Columbia; and
- 1148 (iii) to the extent that amount is included in total income on that resident or nonresident
- 1149 estate's or trust's federal tax return for estates and trusts for that taxable year;
- 1150 (h) the amount of a railroad retirement benefit:
- 1151 (i) paid:
- 1152 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
- 1153 seq.;
- 1154 (B) to a resident or nonresident estate or trust derived from a deceased resident or
- 1155 nonresident individual; and
- 1156 (C) for the taxable year; and
- 1157 (ii) to the extent that railroad retirement benefit is included in total income on that
- 1158 resident or nonresident estate's or trust's federal tax return for estates and trusts;
- 1159 (i) an amount:
- 1160 (i) received by a resident or nonresident estate or trust if that amount is derived from a
- 1161 deceased enrolled member of an American Indian tribe; and
- 1162 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
- 1163 part on that amount in accordance with:
- 1164 (A) federal law;
- 1165 (B) a treaty; or
- 1166 (C) a final decision issued by a court of competent jurisdiction; [~~and~~]
- 1167 (j) (i) subject to Subsection (1)(e)(i), for taxable years beginning on or after January 1,
- 1168 2007, the amount of a qualified investment as defined in Section 53B-8a-102 that:
- 1169 (A) a resident or nonresident estate or trust that is an account owner as defined in
- 1170 Section 53B-8a-102 makes during the taxable year;
- 1171 (B) the resident or nonresident estate or trust described in Subsection (2)(j)(i)(A) does
- 1172 not deduct on a federal tax return for estates and trusts; and
- 1173 (C) does not exceed the maximum amount of the qualified investment that may be
- 1174 subtracted from federal taxable income for a taxable year in accordance with Subsections

1175 53B-8a-106(1)(e) and (f); and  
1176 (ii) subject to Subsection (1)(e)(ii), for the taxable year beginning on or after January 1,  
1177 2007, but beginning on or before December 31, 2007 only, and in addition to any subtraction a  
1178 resident or nonresident estate or trust that is an account owner as defined in Section  
1179 53B-8a-102 makes in accordance with Subsection (2)(j)(i), the amount of a qualified  
1180 investment as defined in Section 53B-8a-102 that:

1181 (A) a resident or nonresident estate or trust that is an account owner as defined in  
1182 Section 53B-8a-102 could have subtracted under Subsection (2)(j)(i) for the taxable year  
1183 beginning on or after January 1, 2006, but beginning on or before December 31, 2006, had the  
1184 subtraction under Subsection (2)(j)(i) been in effect for the taxable year beginning on or after  
1185 January 1, 2006, but beginning on or before December 31, 2006;

1186 (B) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A)  
1187 makes during the taxable year beginning on or after January 1, 2006, but beginning on or  
1188 before December 31, 2006;

1189 (C) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A) does  
1190 not deduct on a federal tax return for estates and trusts; and

1191 (D) does not exceed the maximum amount of the qualified investment that may be  
1192 subtracted from federal taxable income:

1193 (I) for the taxable year beginning on or after January 1, 2006, but beginning on or  
1194 before December 31, 2006; and

1195 (II) in accordance with Subsections 53B-8a-106(1)(e) and (f); and  
1196 [(j)] (k) any fiduciary adjustments required by Section 59-10-210.

1197 (3) Notwithstanding Subsection (1)(c), interest from bonds, notes, and other evidences  
1198 of indebtedness issued by an entity described in Subsections (1)(c)(i) through (iv) may not be  
1199 added to federal taxable income of a resident or nonresident estate or trust if, as annually  
1200 determined by the commission:

1201 (a) for an entity described in Subsection (1)(c)(i) or (ii), the entity and all of the  
1202 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
1203 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or  
1204 (b) for an entity described in Subsection (1)(c)(iii) or (iv), the following do not impose  
1205 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of

1206 this state:

1207 (i) the entity; or

1208 (ii) (A) the state in which the entity is located; or

1209 (B) the District of Columbia, if the entity is located within the District of Columbia.

1210 (4) (a) A subtraction for an amount described in Subsection (2)(d) is allowed only if:

1211 (i) the income is derived from a deceased Ute tribal member; and

1212 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the

1213 requirements of this Subsection (4).

1214 (b) The agreement described in Subsection (4)(a):

1215 (i) may not:

1216 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

1217 (B) provide a subtraction under this section greater than or different from the

1218 subtraction described in Subsection (2)(d); or

1219 (C) affect the power of the state to establish rates of taxation; and

1220 (ii) shall:

1221 (A) provide for the implementation of the subtraction described in Subsection (2)(d);

1222 (B) be in writing;

1223 (C) be signed by:

1224 (I) the governor; and

1225 (II) the chair of the Business Committee of the Ute tribe;

1226 (D) be conditioned on obtaining any approval required by federal law; and

1227 (E) state the effective date of the agreement.

1228 (c) (i) The governor shall report to the commission by no later than February 1 of each

1229 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is

1230 in effect.

1231 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the

1232 subtraction permitted under Subsection (2)(d) is not allowed for taxable years beginning on or

1233 after the January 1 following the termination of the agreement.

1234 (d) For purposes of Subsection (2)(d) and in accordance with Title 63, Chapter 46a,

1235 Utah Administrative Rulemaking Act, the commission may make rules:

1236 (i) for determining whether income is derived from a source within the Uintah and



1237 Ouray Reservation; and

1238 (ii) that are substantially similar to how adjusted gross income derived from Utah  
1239 sources is determined under Section 59-10-117.

1240 Section 17. Section **59-10-1015.1** is enacted to read:

1241 **59-10-1015.1. Utah Educational Savings Plan tax credit.**

1242 (1) As used in this section:

1243 (a) "Account owner" is as defined in Section 53B-8a-102.

1244 (b) "Higher education costs" is as defined in Section 53B-8a-102.

1245 (c) "Maximum amount of a qualified investment for the taxable year" means, for a  
1246 taxable year:

1247 (i) for a claimant that is an account owner, if that claimant is a person other than a  
1248 husband and wife who file a single return jointly, the maximum amount of a qualified  
1249 investment:

1250 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

1251 (B) increased or decreased for that taxable year in accordance with Subsection  
1252 53B-8a-106(1)(f); or

1253 (ii) for claimants who are husband and wife account owners who file a single return  
1254 jointly, the maximum amount of a qualified investment:

1255 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

1256 (B) increased or decreased for that taxable year in accordance with Subsection  
1257 53B-8a-106(1)(f).

1258 (d) "Qualified investment" is as defined in Section 53B-8a-102.

1259 (2) For taxable years beginning on or after January 1, 2007, a claimant that is an  
1260 account owner may claim a nonrefundable tax credit equal to the product of:

1261 (a) the lesser of:

1262 (i) the amount of a qualified investment the claimant:

1263 (A) makes during the taxable year; and

1264 (B) does not deduct on the claimant's federal individual income tax return; or

1265 (ii) the maximum amount of a qualified investment for the taxable year if the amount

1266 described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified investment

1267 for the taxable year; and

1268 (b) 7%.

1269 (3) A tax credit under this section may not be carried forward or carried back.

1270 Section 18. Section **59-10-1204** is amended to read:

1271 **59-10-1204. Additions to and subtractions from adjusted gross income of a**  
1272 **resident or nonresident individual.**

1273 (1) In calculating state taxable income for purposes of this part, the following amounts  
1274 shall be added to the adjusted gross income of a resident or nonresident individual:

1275 (a) the amount described in Subsection 59-10-114(1)(a), if that amount is deducted by  
1276 a resident or nonresident estate or trust in determining federal taxable income;

1277 (b) the lump sum distribution described in Subsection 59-10-114(1)(b);

1278 (c) subject to Subsection 59-10-114(5), the amount described in Subsection  
1279 59-10-114(1)(c);

1280 (d) a withdrawal described in Subsection 59-10-114(1)(e);

1281 (e) the amount described in Subsection 59-10-114(1)(f);

1282 (f) subject to Subsection 59-10-114(6), the interest described in Subsection  
1283 59-10-114(1)(g);

1284 (g) a distribution described in Subsection 59-10-114(1)(h);

1285 (h) a distribution described in Subsection 59-10-114(1)(i); or

1286 (i) an expense described in Subsection 59-10-114(1)(j).

1287 (2) In calculating state taxable income for purposes of this part, the following amounts  
1288 shall be subtracted from the adjusted gross income of a resident or nonresident individual:

1289 (a) the interest or dividends described in Subsection 59-10-114(2)(a);

1290 (b) subject to Subsection 59-10-114(4), the amount described in Subsection  
1291 59-10-114(2)~~(k)~~(j);

1292 (c) an amount described in Subsection 59-10-114(2)~~(m)~~(m);

1293 (d) the amount described in Subsection 59-10-114(2)~~(n)~~(n); and

1294 (e) an amount described in Subsection 59-10-114(2)~~(o)~~(o).

1295 Section 19. **Retrospective operation.**

1296 This bill has retrospective operation for taxable years beginning on or after January 1,  
1297 2007.

**Legislative Review Note**  
as of 2-6-07 5:29 PM

**Office of Legislative Research and General Counsel**

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**Fiscal Note****S.B. 242 - Income Tax Additions, Subtractions, and Tax Credits for Higher  
Education Savings  
2007 General Session  
State of Utah**

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**State Impact**

Enactment of this bill could result in an Education Fund loss of \$5,000 annually.

	<u>FY 2007 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>
Education Fund	\$0	\$0	\$0	\$0	(\$5,000)	(\$5,000)
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$5,000)</b>	<b>(\$5,000)</b>

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

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals and businesses, other than the credit allowed by the provisions of the bill.