

TAX INCENTIVES FOR MILITARY MEMBERS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends the Individual Income Tax Act relating to tax incentives for military members.

Highlighted Provisions:

This bill:

- ▶ repeals obsolete language relating to income tax subtractions for military members;
- ▶ defines terms;
- ▶ enacts a nonrefundable tax credit for military members; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for taxable years beginning on or after January 1, 2008.

This bill coordinates with S.B. 31, Income Tax Amendments, to provide for apportionment of a tax credit.

Utah Code Sections Affected:

AMENDS:

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

59-10-114, as last amended by Laws of Utah 2007, Chapter 100



28 **59-10-202**, as last amended by Laws of Utah 2007, Chapter 100

29 **59-10-1204**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2

30 ENACTS:

31 **59-10-1017**, Utah Code Annotated 1953



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

34 Section 1. Section **59-10-103** is amended to read:

35 **59-10-103. Definitions.**

36 (1) As used in this chapter:

37 (a) "Adjusted gross income":

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

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

42 (b) "Adoption expenses" means:

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

45 (ii) any welfare agency fees or costs;

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

47 (iv) any legal fees or costs; or

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

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

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

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

53 (iii) is not enrolled in:

54 (A) an education program for students with disabilities that is authorized under Section
55 53A-15-301; or

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

57 (d) (i) For purposes of Subsection 59-10-114(2)(1), "capital gain transaction" means a
58 transaction that results in a:

59 (A) short-term capital gain; or

60 (B) long-term capital gain.

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

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

65 (f) "Corporation" includes:

66 (i) associations;

67 (ii) joint stock companies; and

68 (iii) insurance companies.

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

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

73 (I) autism;

74 (II) deafness;

75 (III) preschool developmental delay;

76 (IV) dual sensory impairment;

77 (V) hearing impairment;

78 (VI) intellectual disability;

79 (VII) multidisability;

80 (VIII) orthopedic impairment;

81 (IX) other health impairment;

82 (X) traumatic brain injury; or

83 (XI) visual impairment;

84 (B) is not receiving residential services from:

85 (I) the Division of Services for People with Disabilities created under Section
86 62A-5-102; or

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

88 and

89 (C) is enrolled in:

90 (I) an education program for students with disabilities that is authorized under Section
91 53A-15-301; or

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

94 (ii) is identified under guidelines of the Department of Health as qualified for:

95 (A) Early Intervention; or

96 (B) Infant Development Services.

97 (h) "Distributable net income" is as defined in Section 643, Internal Revenue Code.

98 (i) "Employee" is as defined in Section 59-10-401.

99 (j) "Employer" is as defined in Section 59-10-401.

100 (k) "Federal taxable income":

101 (i) for a resident or nonresident individual, means taxable income as defined by Section
102 63, Internal Revenue Code; or

103 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
104 (b), Internal Revenue Code.

105 (l) "Fiduciary" means:

106 (i) a guardian;

107 (ii) a trustee;

108 (iii) an executor;

109 (iv) an administrator;

110 (v) a receiver;

111 (vi) a conservator; or

112 (vii) any person acting in any fiduciary capacity for any individual.

113 (m) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
114 homesteaded land that was held to have been diminished from the Uintah and Ouray
115 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

116 (n) "Individual" means a natural person and includes aliens and minors.

117 (o) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate
118 all or part of the trust without the consent of a person who has a substantial beneficial interest
119 in the trust and the interest would be adversely affected by the exercise of the settlor's power to
120 revoke or terminate all or part of the trust.

121 (p) For purposes of Subsection 59-10-114(2)(l), "long-term capital gain" is as defined
122 in Section 1222, Internal Revenue Code.

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

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

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

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

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

131 (I) a trust;

132 (II) an estate; or

133 (III) a corporation.

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

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

138 [~~(t) "Qualifying military servicemember" means a member of:~~]

139 [~~(i) The Utah Army National Guard;~~]

140 [~~(ii) The Utah Air National Guard; or~~]

141 [~~(iii) the following if the member is assigned to a unit that is located in the state:]~~]

142 [~~(A) The Army Reserve;~~]

143 [~~(B) The Naval Reserve;~~]

144 [~~(C) The Air Force Reserve;~~]

145 [~~(D) The Marine Corps Reserve; or~~]

146 [~~(E) The Coast Guard Reserve.~~]

147 [~~(u)~~] (t) "Qualifying stock" means stock that is:

148 (i) (A) common; or

149 (B) preferred;

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

151 (A) a resident or nonresident individual; or

152 (B) a partnership if the resident or nonresident individual making a subtraction from
153 federal taxable income in accordance with Subsection 59-10-114(2)(l):

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

155 (II) remains a partner until the last day of the taxable year for which the resident or
156 nonresident individual makes the subtraction from federal taxable income in accordance with
157 Subsection 59-10-114(2)(l); and

158 (iii) issued:

159 (A) by a Utah small business corporation;

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

161 (C) for:

162 (I) money; or

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

164 [~~(v)~~] (u) (i) "Resident individual" means:

165 (A) an individual who is domiciled in this state for any period of time during the
166 taxable year, but only for the duration of the period during which the individual is domiciled in
167 this state; or

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

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

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

171 (ii) For purposes of Subsection (1)[~~(v)~~](u)(i)(B), a fraction of a calendar day shall be
172 counted as a whole day.

173 [~~(w)~~] (v) "Resident estate" or "resident trust" is as defined in Section 75-7-103.

174 [~~(x)~~] (w) For purposes of Subsection 59-10-114(2)(l), "short-term capital gain" is as
175 defined in Section 1222, Internal Revenue Code.

176 [~~(y)~~] (x) "Taxable income" or "state taxable income":

177 (i) subject to Subsection 59-10-302(2), for a resident individual other than a resident
178 individual described in Subsection (1)[~~(y)~~](x)(iii), means the resident individual's federal
179 taxable income after making the:

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

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

182 (ii) for a nonresident individual other than a nonresident individual described in

183 Subsection (1)~~(y)~~(x)(iii), is as defined in Section 59-10-116;

184 (iii) for a resident or nonresident individual that collects and pays a tax described in

185 Part 12, Single Rate Individual Income Tax Act, is as defined in Section 59-10-1202;

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

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

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

190 ~~(aa)~~ (z) "Uintah and Ouray Reservation" means the lands recognized as being
191 included within the Uintah and Ouray Reservation in:

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

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

194 ~~(bb)~~ (aa) (i) "Utah small business corporation" means a corporation that:

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

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

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

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

205 ~~(cc)~~ (bb) "Ute tribal member" means a person who is enrolled as a member of the Ute
206 Indian Tribe of the Uintah and Ouray Reservation.

207 ~~(dd)~~ (cc) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray
208 Reservation.

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

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

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

214 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
215 federal income taxes that are in effect for the taxable year.

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

220 Section 2. Section **59-10-114** is amended to read:

221 **59-10-114. Additions to and subtractions from federal taxable income of an**
222 **individual.**

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

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

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

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

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

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

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

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

241 (i) the resident or nonresident individual did not deduct or include the amounts on the
242 resident or nonresident individual's federal individual income tax return pursuant to Section
243 220, Internal Revenue Code;

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

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

247 (f) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
248 Incentive Program, from the account of a resident or nonresident individual who is an account
249 owner as defined in Section 53B-8a-102, for the taxable year for which the amount is
250 withdrawn, if that amount withdrawn from the account of the resident or nonresident individual
251 who is the account owner:

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

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

255 (I) who is the account owner; and
256 (II) in accordance with Subsection (2)(i); or
257 (B) used as the basis for the resident or nonresident individual who is the account
258 owner to claim a tax credit under Section 59-10-1206.1;

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

263 (i) a state other than this state;
264 (ii) the District of Columbia;
265 (iii) a political subdivision of a state other than this state; or
266 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
267 (iii);

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

271 (i) any distribution received by a resident beneficiary of a nonresident trust of
272 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
273 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
274 was not taxed at the trust level by any state, with undistributed distributable net income
275 considered to be distributed from the most recently accumulated undistributed distributable net

276 income; and
277 (j) any adoption expense:
278 (i) for which a resident or nonresident individual receives reimbursement from another
279 person; and
280 (ii) to the extent to which the resident or nonresident individual deducts that adoption
281 expense:
282 (A) under Subsection (2)(c); or
283 (B) from federal taxable income on a federal individual income tax return.
284 (2) There shall be subtracted from federal taxable income of a resident or nonresident
285 individual:
286 (a) the interest or a dividend on obligations or securities of the United States and its
287 possessions or of any authority, commission, or instrumentality of the United States, to the
288 extent that interest or dividend is included in gross income for federal income tax purposes for
289 the taxable year but exempt from state income taxes under the laws of the United States, but
290 the amount subtracted under this Subsection (2)(a) shall be reduced by any interest on
291 indebtedness incurred or continued to purchase or carry the obligations or securities described
292 in this Subsection (2)(a), and by any expenses incurred in the production of interest or dividend
293 income described in this Subsection (2)(a) to the extent that such expenses, including
294 amortizable bond premiums, are deductible in determining federal taxable income;
295 (b) 1/2 of the net amount of any income tax paid or payable to the United States after all
296 allowable credits, as reported on the United States individual income tax return of the taxpayer
297 for the same taxable year;
298 (c) the amount of adoption expenses for one of the following taxable years as elected
299 by the resident or nonresident individual:
300 (i) regardless of whether a court issues an order granting the adoption, the taxable year
301 in which the adoption expenses are:
302 (A) paid; or
303 (B) incurred;
304 (ii) the taxable year in which a court issues an order granting the adoption; or
305 (iii) any year in which the resident or nonresident individual may claim the federal
306 adoption expenses credit under Section 23, Internal Revenue Code;

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

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

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

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

321 (i) for:

322 (A) the taxpayer;

323 (B) the taxpayer's spouse; and

324 (C) the taxpayer's dependents; and

325 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or
326 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

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

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

336 (A) the maximum contribution allowed under the Medical Care Savings Account Act
337 for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is

338 covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that
339 covers the other spouse, and each spouse has a medical care savings account; or

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

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

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

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

346 (i) a resident or nonresident individual who is an account owner as defined in Section
347 53B-8a-102 makes during the taxable year;

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

350 (iii) does not exceed the maximum amount of the qualified investment that may be
351 subtracted from federal taxable income for a taxable year in accordance with Subsections
352 53B-8a-106(1)(e) and (f);

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

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

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

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

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

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

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

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

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

369 and

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

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

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

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

379 ~~[(m) for the taxable year beginning on or after January 1, 2005, but beginning on or
 380 before December 31, 2005, the first \$2,200 of income a qualifying military servicemember
 381 receives:]~~

382 ~~[(i) for service:]~~

383 ~~[(A) as a qualifying military servicemember, or]~~

384 ~~[(B) under an order into active service in accordance with Section 39-1-5; and]~~

385 ~~[(ii) to the extent that income is included in adjusted gross income on that resident or
 386 nonresident individual's federal individual income tax return for that taxable year;]~~

387 ~~[(m)]~~ (m) an amount received by a resident or nonresident individual or distribution
 388 received by a resident or nonresident beneficiary of a resident trust:

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

390 (A) a state; or

391 (B) the District of Columbia; and

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

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

396 (i) paid:

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

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

400 (C) for the taxable year; and
401 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
402 that resident or nonresident individual's federal individual income tax return for that taxable
403 year; and
404 [~~(p)~~] (o) an amount:
405 (i) received by an enrolled member of an American Indian tribe; and
406 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
407 part on that amount in accordance with:
408 (A) federal law;
409 (B) a treaty; or
410 (C) a final decision issued by a court of competent jurisdiction.
411 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
412 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
413 \$4,800, except that:
414 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
415 earned over \$32,000, the amount of the retirement income exemption that may be subtracted
416 shall be reduced by 50 cents;
417 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
418 earned over \$16,000, the amount of the retirement income exemption that may be subtracted
419 shall be reduced by 50 cents; and
420 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
421 \$25,000, the amount of the retirement income exemption that may be subtracted shall be
422 reduced by 50 cents.
423 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption
424 shall be further reduced according to the following schedule:
425 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
426 earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50
427 cents;
428 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
429 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50
430 cents; and

431 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over
432 \$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.

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

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

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

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

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

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

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

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

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

453 (i) may not:

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

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

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

458 (ii) shall:

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

460 (B) be in writing;

461 (C) be signed by:

- 462 (I) the governor; and
- 463 (II) the chair of the Business Committee of the Ute tribe;
- 464 (D) be conditioned on obtaining any approval required by federal law; and
- 465 (E) state the effective date of the agreement.
- 466 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 467 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
- 468 in effect.
- 469 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 470 subtraction permitted under Subsection (2)(k) is not allowed for taxable years beginning on or
- 471 after the January 1 following the termination of the agreement.
- 472 (d) For purposes of Subsection (2)(k) and in accordance with Title 63, Chapter 46a,
- 473 Utah Administrative Rulemaking Act, the commission may make rules:
- 474 (i) for determining whether income is derived from a source within the Uintah and
- 475 Ouray Reservation; and
- 476 (ii) that are substantially similar to how adjusted gross income derived from Utah
- 477 sources is determined under Section 59-10-117.
- 478 (5) (a) For purposes of this Subsection (5), "Form 8814" means:
- 479 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
- 480 Interest and Dividends; or
- 481 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
- 482 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
- 483 2000 Form 8814 if for purposes of federal individual income taxes the information contained
- 484 on 2000 Form 8814 is reported on a form other than Form 8814; and
- 485 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with Title 63, Chapter
- 486 46a, Utah Administrative Rulemaking Act, the commission may make rules designating a form
- 487 as being substantially similar to 2000 Form 8814 if for purposes of federal individual income
- 488 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
- 489 8814.
- 490 (b) The amount of a child's income added to adjusted gross income under Subsection
- 491 (1)(c) is equal to the difference between:
- 492 (i) the lesser of:

493 (A) the base amount specified on Form 8814; and
494 (B) the sum of the following reported on Form 8814:
495 (I) the child's taxable interest;
496 (II) the child's ordinary dividends; and
497 (III) the child's capital gain distributions; and
498 (ii) the amount not taxed that is specified on Form 8814.
499 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences
500 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be
501 added to federal taxable income of a resident or nonresident individual if, as annually
502 determined by the commission:
503 (a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the
504 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
505 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
506 (b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose
507 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
508 this state:
509 (i) the entity; or
510 (ii) (A) the state in which the entity is located; or
511 (B) the District of Columbia, if the entity is located within the District of Columbia.
512 Section 3. Section **59-10-202** is amended to read:
513 **59-10-202. Additions to and subtractions from federal taxable income of a**
514 **resident or nonresident estate or trust.**
515 (1) There shall be added to federal taxable income of a resident or nonresident estate or
516 trust:
517 (a) the amount of any income tax imposed by this or any predecessor Utah individual
518 income tax law and the amount of any income tax imposed by the laws of another state, the
519 District of Columbia, or a possession of the United States, to the extent deducted from federal
520 adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal
521 taxable income;
522 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3) of the
523 Internal Revenue Code, to the extent deductible under Section 62(a)(8) of the Internal Revenue

524 Code in determining adjusted gross income;

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

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

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

528 one or more of the following entities:

529 (i) a state other than this state;

530 (ii) the District of Columbia;

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

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

533 (iii);

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

535 income is derived from stock:

536 (i) in an S corporation; and

537 (ii) that is held by an electing small business trust;

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

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

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

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

542 trust that is the account owner:

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

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

545 (I) that is the account owner; and

546 (II) in accordance with Subsection (2)~~(f)~~(i)(i); and

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

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

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

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

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

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

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

554 (I) that is the account owner; and

555 (II) in accordance with Subsection (2)~~(j)~~(i)(ii); and
556 (f) any fiduciary adjustments required by Section 59-10-210.
557 (2) There shall be subtracted from federal taxable income of a resident or nonresident
558 estate or trust:
559 (a) the interest or a dividend on obligations or securities of the United States and its
560 possessions or of any authority, commission, or instrumentality of the United States, to the
561 extent that interest or dividend is included in gross income for federal income tax purposes for
562 the taxable year but exempt from state income taxes under the laws of the United States, but
563 the amount subtracted under this Subsection (2) shall be reduced by any interest on
564 indebtedness incurred or continued to purchase or carry the obligations or securities described
565 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
566 income described in this Subsection (2) to the extent that such expenses, including amortizable
567 bond premiums, are deductible in determining federal taxable income;
568 (b) 1/2 of the net amount of any income tax paid or payable to the United States after
569 all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the
570 same taxable year;
571 (c) income of an irrevocable resident trust if:
572 (i) the income would not be treated as state taxable income derived from Utah sources
573 under Section 59-10-204 if received by a nonresident trust;
574 (ii) the trust first became a resident trust on or after January 1, 2004;
575 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
576 resident irrevocable trust created by the same settlor or the spouse of the same settlor;
577 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);
578 (v) the amount subtracted under this Subsection (2) is reduced to the extent the settlor
579 or any other person is treated as an owner of any portion of the trust under Subtitle A,
580 Subchapter J, Subpart E of the Internal Revenue Code; and
581 (vi) the amount subtracted under this Subsection (2) is reduced by any interest on
582 indebtedness incurred or continued to purchase or carry the assets generating the income
583 described in this Subsection (2), and by any expenses incurred in the production of income
584 described in this Subsection (2), to the extent that those expenses, including amortizable bond
585 premiums, are deductible in determining federal taxable income;

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

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

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

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

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

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

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

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

598 and

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

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

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

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

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

611 ~~[(i) for service:]~~

612 ~~[(A) as a qualifying military servicemember; or]~~

613 ~~[(B) under an order into active service in accordance with Section 39-1-5; and]~~

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

616 ~~[(g)]~~ (f) any amount:

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

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

619 (A) a state; or

620 (B) the District of Columbia; and

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

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

623 ~~(f)~~ (g) the amount of a railroad retirement benefit:

624 (i) paid:

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

626 seq.;

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

628 nonresident individual; and

629 (C) for the taxable year; and

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

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

632 ~~(g)~~ (h) an amount:

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

634 deceased enrolled member of an American Indian tribe; and

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

636 part on that amount in accordance with:

637 (A) federal law;

638 (B) a treaty; or

639 (C) a final decision issued by a court of competent jurisdiction;

640 ~~(h)~~ (i) (i) subject to Subsection (1)(e)(i), for taxable years beginning on or after

641 January 1, 2007, the amount of a qualified investment as defined in Section 53B-8a-102 that:

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

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

644 (B) the resident or nonresident estate or trust described in Subsection (2)~~(g)~~(i)(i)(A)

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

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

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

648 53B-8a-106(1)(e) and (f); and

649 (ii) subject to Subsection (1)(e)(ii), for the taxable year beginning on or after January 1,
650 2007, but beginning on or before December 31, 2007 only, and in addition to any subtraction a
651 resident or nonresident estate or trust that is an account owner as defined in Section
652 53B-8a-102 makes in accordance with Subsection (2)~~(j)~~(i)(i), the amount of a qualified
653 investment as defined in Section 53B-8a-102 that:

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

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

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

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

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

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

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

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

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

679 this state:

680 (i) the entity; or

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

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

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

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

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

686 requirements of this Subsection (4).

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

688 (i) may not:

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

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

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

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

693 (ii) shall:

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

695 (B) be in writing;

696 (C) be signed by:

697 (I) the governor; and

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

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

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

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

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

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

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

710 Ouray Reservation; and

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

713 Section 4. Section **59-10-1017** is enacted to read:

714 **59-10-1017. Nonrefundable tax credit for qualifying military member.**

715 (1) "Qualifying military member" means a member of:

716 (a) The Utah Army National Guard;

717 (b) The Utah Air National Guard; or

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

719 (i) The Army Reserve;

720 (ii) The Naval Reserve;

721 (iii) The Air Force Reserve;

722 (iv) The Marine Corps Reserve; or

723 (v) The Coast Guard Reserve.

724 (2) For taxable years beginning on or after January 1, 2008, a claimant who is a
725 qualifying military member may claim a nonrefundable tax credit equal to the product of:

726 (a) the income the qualifying military member receives during the taxable year:

727 (i) in an amount that does not exceed \$2,200;

728 (ii) for service:

729 (A) as a qualifying military member; or

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

731 (iii) to the extent that income is included in adjusted gross income on that qualifying
732 military member's federal individual income tax return for that taxable year; and

733 (b) 5%.

734 (3) For taxable years beginning on or after January 1, 2008, an estate or trust that
735 receives income that is derived from a deceased qualifying military member may claim a
736 nonrefundable tax credit equal to the product of:

737 (a) the income the estate or trust receives that is derived from the deceased qualifying
738 military member:

739 (i) in an amount that does not exceed \$2,200;

740 (ii) for the deceased qualifying military member's service:

741 (A) as a qualifying military member; or
 742 (B) under an order into active service in accordance with Section 39-1-5; and
 743 (iii) to the extent that income is included in total income on that estate's or trust's
 744 federal tax return for estates and trusts for that taxable year; and

745 (b) 5%.

746 (4) A claimant, estate, or trust may not carry forward or carry back a tax credit under
 747 this section.

748 Section 5. Section **59-10-1204** is amended to read:

749 **59-10-1204. Additions to and subtractions from adjusted gross income of a**
 750 **resident or nonresident individual.**

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

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

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

756 (c) subject to Subsection 59-10-114(5), the amount described in Subsection
 757 59-10-114(1)(c);

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

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

760 (f) subject to Subsection 59-10-114(6), the interest described in Subsection
 761 59-10-114(1)(g);

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

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

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

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

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

768 (b) subject to Subsection 59-10-114(4), the amount described in Subsection
 769 59-10-114(2)(k);

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

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

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

773 Section 6. **Retrospective operation.**

774 This bill has retrospective operation for taxable years beginning on or after January 1,
775 2008.

776 Section 7. **Coordinating H.B. 279 with S.B. 31 -- Modifying substantive language.**

777 If this H.B. 279 and S.B. 31, Income Tax Amendments, both pass, it is the intent of the
778 Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah
779 Code database for publication, modify Section 59-10-1002.2, which is renumbered and
780 amended in S.B. 31, so that a citation to the statutory section enacted in Section 4 in this H.B.
781 279 is included in the list of sections in:

782 (1) Subsection 59-10-1002.2(1); and

783 (2) Subsection 59-10-1002.2(2).

Legislative Review Note
as of 1-9-08 11:05 AM

Office of Legislative Research and General Counsel

H.B. 279 - Tax Incentives for Military Members

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill would reduce Education Fund revenue by \$1,100,000 annually beginning in FY 2009.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
Education Fund	\$0	\$0	\$0	\$0	(\$1,100,000)	(\$1,100,000)
Total	\$0	\$0	\$0	\$0	(\$1,100,000)	(\$1,100,000)

Individual, Business and/or Local Impact

Eligible individuals will receive a tax credit of \$110.