

INCOME TAX AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: John Dougall

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

The Utah Tax Review Commission recommended this bill.

Membership: 6 legislators 10 non-legislators

Legislative Vote: 5 voting for 0 voting against 1 absent

General Description:

This bill amends the Individual Income Tax Act and related provisions to address the income taxation of individuals, estates, and trusts.

Highlighted Provisions:

This bill:

- ▶ repeals provisions imposing an individual income tax on the basis of graduated brackets and rates;
- ▶ provides that an individual income tax is imposed on the basis of a single tax rate, including:
 - modifying and repealing definitions;
 - modifying additions to and subtractions from adjusted gross income;
 - addressing the taxation of a nonresident individual or part-year resident individual; and
 - addressing provisions relating to the determination and reporting of income tax liability and information;



- 28 ▶ modifies the income taxation of estates and trusts, including:
 - 29 • providing definitions;
 - 30 • providing that the tax is calculated on the basis of unadjusted income;
 - 31 • modifying additions to and subtractions from unadjusted income; and
 - 32 • addressing provisions relating to the determination and reporting of income tax
- 33 liability and information;
- 34 ▶ addresses the taxation of pass-through entities, including:
 - 35 • providing definitions; and
 - 36 • renumbering and amending provisions relating to pass-through entities;
- 37 ▶ renumbers and amends provisions relating to tax credits, including tax credits for:
 - 38 • a taxpayer;
 - 39 • an investment in the Utah Educational Savings Plan Trust; or
 - 40 • retirement income;
- 41 ▶ provides nonrefundable tax credits for:
 - 42 • a trust or estate; or
 - 43 • a contribution to a medical care savings account;
- 44 ▶ modifies the refundable renewable energy tax credit to clarify that an estate or trust
- 45 may claim the tax credit;
- 46 ▶ addresses the apportionment of tax credits;
- 47 ▶ addresses the following relating to a medical care savings account:
 - 48 • taxation;
 - 49 • penalties; and
 - 50 • interest;
- 51 ▶ amends provisions relating to the taxation of an investment in the Utah Educational
- 52 Savings Plan Trust;
- 53 ▶ renumbers and amends the individual income tax contribution provisions;
- 54 ▶ addresses the administration of income tax contributions; and
- 55 ▶ makes technical changes.

56 **Monies Appropriated in this Bill:**

57 None

58 **Other Special Clauses:**

59 This bill has retrospective operation for taxable years beginning on or after January 1,
60 2008.

61 **Utah Code Sections Affected:**

62 AMENDS:

63 **9-4-802**, as last amended by Laws of Utah 2003, Chapter 132
64 **9-4-803**, as last amended by Laws of Utah 2003, Chapter 132
65 **23-14-13**, as last amended by Laws of Utah 1995, Chapter 211
66 **23-14-14.1**, as enacted by Laws of Utah 2003, Chapter 162
67 **26-18a-3**, as last amended by Laws of Utah 1997, Chapter 1
68 **26-18a-4**, as last amended by Laws of Utah 1997, Chapter 1
69 **26-48-102**, as enacted by Laws of Utah 2006, Chapter 280
70 **31A-32a-101**, as enacted by Laws of Utah 1999, Chapter 131
71 **31A-32a-103**, as enacted by Laws of Utah 1999, Chapter 131
72 **31A-32a-104**, as enacted by Laws of Utah 1999, Chapter 131
73 **31A-32a-105**, as enacted by Laws of Utah 1999, Chapter 131
74 **31A-32a-106**, as last amended by Laws of Utah 2001, Chapter 53
75 **31A-32a-107**, as enacted by Laws of Utah 1999, Chapter 131
76 **48-2c-117**, as enacted by Laws of Utah 2001, Chapter 260
77 **53B-8a-106**, as last amended by Laws of Utah 2007, Chapter 100
78 **59-10-103**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
79 **59-10-104**, as last amended by Laws of Utah 2007, Chapter 288
80 **59-10-104.1**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
81 **59-10-110**, as renumbered and amended by Laws of Utah 1987, Chapter 2
82 **59-10-114**, as last amended by Laws of Utah 2007, Chapter 100
83 **59-10-115**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
84 **59-10-116**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
85 **59-10-117**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
86 **59-10-118**, as last amended by Laws of Utah 1995, Chapter 311
87 **59-10-119**, as renumbered and amended by Laws of Utah 1987, Chapter 2
88 **59-10-120**, as renumbered and amended by Laws of Utah 1987, Chapter 2
89 **59-10-121**, as renumbered and amended by Laws of Utah 1987, Chapter 2

- 90 **59-10-122**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 91 **59-10-123**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 92 **59-10-124**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 93 **59-10-125**, as renumbered and amended by Laws of Utah 1987, Chapter 2
- 94 **59-10-126**, as last amended by Laws of Utah 1995, Chapter 311
- 95 **59-10-201**, as last amended by Laws of Utah 2007, Chapter 100
- 96 **59-10-201.1**, as last amended by Laws of Utah 2006, Chapter 223
- 97 **59-10-202**, as last amended by Laws of Utah 2007, Chapter 100
- 98 **59-10-204**, as last amended by Laws of Utah 2006, Chapter 223
- 99 **59-10-205**, as last amended by Laws of Utah 2006, Chapter 223
- 100 **59-10-207**, as last amended by Laws of Utah 2006, Chapter 223
- 101 **59-10-209.1**, as enacted by Laws of Utah 2006, Chapter 223
- 102 **59-10-210**, as last amended by Laws of Utah 2006, Chapter 223
- 103 **59-10-507**, as last amended by Laws of Utah 2003, Chapter 198
- 104 **59-10-1106**, as enacted by Laws of Utah 2007, Chapter 288

105 ENACTS:

- 106 **59-10-1020**, Utah Code Annotated 1953
- 107 **59-10-1021**, Utah Code Annotated 1953
- 108 **59-10-1301**, Utah Code Annotated 1953
- 109 **59-10-1302**, Utah Code Annotated 1953
- 110 **59-10-1303**, Utah Code Annotated 1953
- 111 **59-10-1401**, Utah Code Annotated 1953
- 112 **59-10-1402**, Utah Code Annotated 1953

113 RENUMBERS AND AMENDS:

- 114 **59-10-1002.1**, (Renumbered from 59-10-1016, as renumbered and amended by Laws of
- 115 Utah 2006, Chapter 223)
- 116 **59-10-1002.2**, (Renumbered from 59-10-1206.9, as enacted by Laws of Utah 2007,
- 117 Chapter 288)
- 118 **59-10-1017**, (Renumbered from 59-10-1206.1, as enacted by Laws of Utah 2007,
- 119 Chapter 100)
- 120 **59-10-1018**, (Renumbered from 59-10-1206.2, as enacted by Laws of Utah 2007,

121 Chapter 288)
122 **59-10-1019**, (Renumbered from 59-10-1206.3, as enacted by Laws of Utah 2007,
123 Chapter 288)
124 **59-10-1304**, (Renumbered from 59-10-551, as last amended by Laws of Utah 2006,
125 Chapter 280)
126 **59-10-1305**, (Renumbered from 59-10-530, as last amended by Laws of Utah 1997,
127 Chapter 12)
128 **59-10-1306**, (Renumbered from 59-10-530.5, as last amended by Laws of Utah 2003,
129 Chapter 132)
130 **59-10-1307**, (Renumbered from 59-10-549, as last amended by Laws of Utah 2005,
131 Chapter 208)
132 **59-10-1308**, (Renumbered from 59-10-550, as last amended by Laws of Utah 1997,
133 Chapters 1, and 12)
134 **59-10-1309**, (Renumbered from 59-10-550.1, as enacted by Laws of Utah 2003,
135 Chapter 162)
136 **59-10-1310**, (Renumbered from 59-10-550.2, as enacted by Laws of Utah 2006,
137 Chapter 280)
138 **59-10-1311**, (Renumbered from 59-10-547, as last amended by Laws of Utah 1998,
139 Chapter 269)
140 **59-10-1312**, (Renumbered from 59-10-548, as last amended by Laws of Utah 2002,
141 Chapters 107, and 256)
142 **59-10-1403**, (Renumbered from 59-10-301, as renumbered and amended by Laws of
143 Utah 1987, Chapter 2)
144 **59-10-1404**, (Renumbered from 59-10-302, as renumbered and amended by Laws of
145 Utah 1987, Chapter 2)
146 **59-10-1405**, (Renumbered from 59-10-303, as last amended by Laws of Utah 2006,
147 Fourth Special Session, Chapter 2)
148 REPEALS:
149 **59-10-206**, as last amended by Laws of Utah 1995, Chapter 345
150 **59-10-801**, as last amended by Laws of Utah 1997, Chapter 159
151 **59-10-1201**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2

- 152 **59-10-1202**, as last amended by Laws of Utah 2007, Chapters 100, and 288
- 153 **59-10-1203**, as last amended by Laws of Utah 2007, Chapters 100, and 288
- 154 **59-10-1204**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 155 **59-10-1205**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 156 **59-10-1206**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2
- 157 **59-10-1207**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2



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

160 Section 1. Section **9-4-802** is amended to read:

161 **9-4-802. Purposes of Homeless Coordinating Committee -- Uses of Pamela**
 162 **Atkinson Homeless Trust Account.**

163 (1) (a) The Homeless Coordinating Committee shall work to ensure that services
 164 provided to the homeless by state agencies, local governments, and private organizations are
 165 provided in a cost-effective manner.

166 (b) Programs funded by the committee shall emphasize emergency housing and
 167 self-sufficiency, including placement in meaningful employment or occupational training
 168 activities and, where needed, special services to meet the unique needs of the homeless who
 169 have families with children, or who are mentally ill, disabled, or suffer from other serious
 170 challenges to employment and self-sufficiency.

171 (c) The committee may also fund treatment programs to ameliorate the effects of
 172 substance abuse or a disability.

173 (2) The committee members designated in Subsection 9-4-801(2) shall:

174 (a) award contracts funded by the Pamela Atkinson Homeless Trust Account with the
 175 advice and input of those designated in Subsection 9-4-801(3);

176 (b) consider need, diversity of geographic location, coordination with or enhancement
 177 of existing services, and the extensive use of volunteers; and

178 (c) give priority for funding to programs that serve the homeless who are mentally ill
 179 and who are in families with children.

180 (3) (a) In any fiscal year, no more than 80% of the funds in the Pamela Atkinson
 181 Homeless Trust Account may be allocated to organizations that provide services only in Salt
 182 Lake, Davis, Weber, and Utah Counties.

183 (b) The committee may:

184 (i) expend up to 3% of its annual appropriation for administrative costs associated with
185 the allocation of funds from the Pamela Atkinson Homeless Trust Account, and up to 2% of its
186 annual appropriation for marketing the account and soliciting donations to the account; and

187 (ii) pay for the initial costs of the State Tax Commission in implementing Section
188 [~~59-10-530.5~~] 59-10-1306 from the account.

189 (4) (a) The committee may not expend, except as provided in Subsection (4)(b), an
190 amount equal to the greater of \$50,000 or 20% of the amount donated to the Pamela Atkinson
191 Homeless Trust Account during fiscal year 1988-89.

192 (b) If there are decreases in contributions to the account, the committee may expend
193 funds held in reserve to provide program stability, but the committee shall reimburse the
194 amounts of those expenditures to the reserve fund.

195 (5) The committee shall make an annual report to the Economic Development and
196 Human Resources Appropriations Subcommittee regarding the programs and services funded
197 by contributions to the Pamela Atkinson Homeless Trust Account.

198 (6) The moneys in the Pamela Atkinson Homeless Trust Account shall be invested by
199 the state treasurer according to the procedures and requirements of Title 51, Chapter 7, State
200 Money Management Act, except that all interest or other earnings derived from the fund
201 moneys shall be deposited in the fund.

202 Section 2. Section **9-4-803** is amended to read:

203 **9-4-803. Creation of Pamela Atkinson Homeless Trust Account.**

204 (1) There is created a restricted account within the General Fund to be known as the
205 Pamela Atkinson Homeless Trust Account.

206 (2) Private contributions received under this section and Section [~~59-10-530.5~~]
207 59-10-1306 shall be deposited into the account to be used only for programs described in
208 Section 9-4-802.

209 (3) Money shall be appropriated from the account to the State Homeless Coordinating
210 Committee in accordance with the Utah Budgetary Procedures Act.

211 (4) The State Homeless Coordinating Committee may accept transfers, grants, gifts,
212 bequests, or any money made available from any source to implement this part.

213 Section 3. Section **23-14-13** is amended to read:

214 **23-14-13. Wildlife Resources Account.**

215 (1) The Wildlife Resources Account [~~within the General Fund~~] is established within
216 the General Fund.

217 (2) The following monies shall be deposited into the Wildlife Resources Account:

218 (a) revenue from the sale of licenses, permits, tags, and certificates of registration
219 issued under this title or a rule or proclamation of the Wildlife Board, except as otherwise
220 provided by this title;

221 (b) revenue from the sale, lease, rental, or other granting of rights of real or personal
222 property acquired with revenue specified in Subsection (a);

223 (c) revenue from fines and forfeitures for violations of this title or any rule,
224 proclamation, or order of the Wildlife Board, minus court costs not to exceed the schedule
225 adopted by the Judicial Council;

226 (d) funds appropriated from the General Fund by the Legislature pursuant to Section
227 23-19-39;

228 (e) other monies received by the division under any provision of this title, except as
229 otherwise provided by this title; [~~and~~]

230 (f) contributions made in accordance with Section 59-10-1305; and

231 [~~(f)~~] (g) interest, dividends, or other income earned on account monies.

232 (3) Monies in the Wildlife Resources Account shall be used for the administration of
233 this title.

234 Section 4. Section **23-14-14.1** is amended to read:

235 **23-14-14.1. Wolf Depredation and Management Restricted Account -- Interest --**
236 **Use of contributions and interest.**

237 (1) There is created within the General Fund the Wolf Depredation and Management
238 Restricted Account.

239 (2) The account shall be funded by contributions deposited into the Wolf Depredation
240 and Management Restricted Account in accordance with Section [~~59-10-550.1~~] 59-10-1309.

241 (3) (a) The Wolf Depredation and Management Restricted Account shall earn interest.

242 (b) Interest earned on the Wolf Depredation and Management Restricted Account shall
243 be deposited into the Wolf Depredation and Management Restricted Account.

244 (4) (a) Subject to Subsection (4)(b), contributions and interest deposited into the Wolf

245 Depredation and Management Restricted Account shall be used by the Division of Wildlife
246 Resources for:

247 (i) payments for livestock depredation by wolves; or

248 (ii) wolf management.

249 (b) Contributions and interest deposited into the Wolf Depredation and Management
250 Restricted Account may be used for the purposes described in Subsection (4)(a) only to the
251 extent permitted by federal law.

252 Section 5. Section **26-18a-3** is amended to read:

253 **26-18a-3. Purpose of committee.**

254 (1) The committee shall work to:

255 (a) provide financial assistance for initial medical expenses of children who need organ
256 transplants;

257 (b) obtain the assistance of volunteer and public service organizations; and

258 (c) fund activities as the committee designates for the purpose of educating the public
259 about the need for organ donors.

260 (2) (a) The committee is responsible for awarding financial assistance funded by the
261 trust account.

262 (b) The financial assistance awarded by the committee under Subsection (1)(a) shall be
263 in the form of interest free loans. The committee may establish terms for repayment of the
264 loans, including a waiver of the requirement to repay any awards if, in the committee's
265 judgment, repayment of the loan would impose an undue financial burden on the recipient.

266 (c) In making financial awards under Subsection (1)(a), the committee shall consider:

267 (i) need;

268 (ii) coordination with or enhancement of existing services or financial assistance,
269 including availability of insurance or other state aid;

270 (iii) the success rate of the particular organ transplant procedure needed by the child;

271 and

272 (iv) the extent of the threat to the child's life without the organ transplant.

273 (3) The committee may only provide the assistance described in this section to children
274 who have resided in Utah, or whose legal guardians have resided in Utah for at least six months
275 prior to the date of assistance under this section.

276 (4) (a) The committee may expend up to 5% of its annual appropriation for
277 administrative costs associated with the allocation of funds from the trust account.

278 (b) The administrative costs shall be used for the costs associated with staffing the
279 committee and for State Tax Commission costs in implementing Section [~~59-10-550~~]
280 59-10-1308.

281 (5) The committee shall make an annual report to the Health and Human Services
282 Appropriations Subcommittee regarding the programs and services funded by contributions to
283 the trust account.

284 Section 6. Section **26-18a-4** is amended to read:

285 **26-18a-4. Creation of Kurt Oscarson Children's Organ Transplant Trust**
286 **Account.**

287 (1) There is created a restricted account within the General Fund pursuant to Section
288 51-5-4 known as the Kurt Oscarson Children's Organ Transplant Trust Account. Private
289 contributions received under this section and Section [~~59-10-550~~] 59-10-1308 shall be
290 deposited into the trust account to be used only for the programs and purposes described in
291 Section 26-18a-3.

292 (2) Money shall be appropriated from the trust account to the committee in accordance
293 with Title 63, Chapter 38, Budgetary Procedures Act.

294 (3) In addition to funds received under Section [~~59-10-550~~] 59-10-1308, the committee
295 may accept transfers, grants, gifts, bequests, or any money made available from any source to
296 implement this chapter.

297 Section 7. Section **26-48-102** is amended to read:

298 **26-48-102. Cat and Dog Community Spay and Neuter Program Restricted**
299 **Account -- Interest -- Use of contributions and interest.**

300 (1) There is created within the General Fund the Cat and Dog Community Spay and
301 Neuter Program Restricted Account.

302 (2) The account shall be funded by contributions deposited into the Cat and Dog
303 Community Spay and Neuter Program Restricted Account in accordance with Section
304 [~~59-10-550.2~~] 59-10-1310.

305 (3) (a) The Cat and Dog Community Spay and Neuter Program Restricted Account
306 shall earn interest.

307 (b) Interest earned on the Cat and Dog Community Spay and Neuter Program
308 Restricted Account shall be deposited into the Cat and Dog Community Spay and Neuter
309 Program Restricted Account.

310 (4) The department shall distribute contributions and interest deposited into the Cat and
311 Dog Community Spay and Neuter Program Restricted Account to one or more organizations
312 that:

313 (a) are exempt from federal income taxation under Section 501(c)(3), Internal Revenue
314 Code;

315 (b) operate a mobile spay and neuter clinic for cats and dogs;

316 (c) provide annual spay and neuter services at the mobile spay and neuter clinic
317 described in Subsection (4)(b):

318 (i) to one or more communities in at least 20 counties in the state; and

319 (ii) by veterinarians who are licensed by Title 58, Chapter 28, Veterinary Practice Act;

320 and

321 (d) (i) spay and neuter cats and dogs owned by persons having low incomes; and

322 (ii) have established written guidelines for determining what constitutes a person
323 having a low income in accordance with any rules made by the department as authorized by
324 Subsection (5)(c).

325 (5) (a) An organization described in Subsection (4) may apply to the department to
326 receive a distribution in accordance with Subsection (4).

327 (b) An organization that receives a distribution from the department in accordance with
328 Subsection (4):

329 (i) shall expend the distribution only to spay or neuter dogs and cats:

330 (A) owned by persons having low incomes;

331 (B) by veterinarians who are licensed by Title 58, Chapter 28, Veterinary Practice Act;

332 (C) through a statewide voucher program; and

333 (D) at a location that:

334 (I) is not a mobile spay and neuter clinic; and

335 (II) does not receive any funding from a governmental entity; and

336 (ii) may not expend the distribution for any administrative cost relating to an
337 expenditure authorized by Subsection (5)(b)(i).

338 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
339 department may make rules:

340 (i) providing procedures and requirements for an organization to apply to the
341 department to receive a distribution in accordance with Subsection (4); and

342 (ii) to define what constitutes a person having a low income.

343 Section 8. Section ~~31A-32a-101~~ is amended to read:

344 **31A-32a-101. Title and scope.**

345 (1) This chapter is known as the "Medical Care Savings Account Act."

346 (2) (a) This chapter applies only to a medical care savings [accounts] account
347 established for the purpose of seeking a tax [deduction] credit under Section [59-10-114]
348 59-10-1021.

349 (b) This chapter does not apply to a medical care savings [accounts that will not be
350 subject to tax deductions under Section 59-10-114] account with respect to which a tax credit is
351 not claimed under Section 59-10-1021.

352 Section 9. Section ~~31A-32a-103~~ is amended to read:

353 **31A-32a-103. Establishing medical care savings accounts.**

354 [~~(1) For tax years beginning 1995, both of the following apply:~~]

355 (1) For a taxable year beginning on or after January 1, 1995:

356 (a) an employer, except as otherwise provided by contract or a collective bargaining
357 agreement, may offer a medical care savings account program to the employer's employees;
358 [~~and~~] or

359 (b) a resident individual may establish a medical care savings account program for the
360 individual or for the individual's dependents.

361 (2) (a) A contribution into an account made by an employer on behalf of an employee,
362 or made by an individual account holder may not exceed the greater of:

363 [~~(a)~~] (i) \$2,000 in any [~~tax~~] taxable year; or

364 (ii) an amount of money equal to the sum of all eligible medical expenses paid by the
365 employee or account holder [~~in~~] for that [tax] taxable year on behalf of the employee, account
366 holder, or the employee's or account holder's spouse or dependents.

367 (b) For purposes of Subsection (2)(a)(ii), eligible medical expenses [~~as defined in~~
368 ~~Subsection 31A-32a-102(5),~~] are limited to expenses in [~~that tax year which~~] the taxable year

369 that an insurance carrier has applied to the employee's or account holder's deductible.

370 (3) An employer that offers a medical care savings account program shall, before
371 making any contributions:

372 (a) inform all employees in writing of the fact that these contributions may not be
373 deductible under the federal tax laws; and

374 (b) obtain from the employee a written election to participate in the medical care
375 savings account program.

376 (4) Except as provided in Sections 31A-32a-105 and 59-10-114, principal contributed
377 to and interest earned on a medical care savings account and money reimbursed to an employee
378 or account holder for eligible medical expenses are exempt from taxation.

379 (5) (a) An employer may select a single account administrator for all of the employer's
380 employee's medical care savings accounts.

381 (b) If a single account administrator is not selected, an employer may contribute
382 directly to the account holder's individual medical care savings account.

383 Section 10. Section **31A-32a-104** is amended to read:

384 **31A-32a-104. Administration of medical care savings account.**

385 (1) An account administrator shall administer the medical care savings account from
386 which the payment of claims is made and has a fiduciary duty to the person for whose benefit
387 the account administrator administers an account.

388 (2) (a) Except as provided in Subsection 31A-32a-105(1), the account administrator
389 shall use the funds held in a medical care savings account solely for the purpose of paying or
390 reimbursing the employee or account holder for eligible medical expenses of the employee or
391 account holder or of the employee's or account holder's dependents.

392 (b) The commissioner shall adopt rules concerning the coordination of benefits
393 between a medical care savings account and medical expenses payable from automobile
394 insurance policies, workers' compensation insurance policies, or other health care insurance
395 policies or contracts.

396 (3) The employee or account holder may submit documentation of eligible medical
397 expenses paid by the employee or account holder in the [~~tax~~] taxable year to the account
398 administrator, and the account administrator shall reimburse the employee or account holder
399 from the employee's or account holder's account for eligible medical expenses.

400 (4) If an employer makes contributions to a medical care savings account program on a
401 periodic installment basis, the employer may advance to an employee an amount necessary to
402 cover eligible medical expenses incurred that exceed the amount in the employee's medical
403 care savings account at the time the expense is incurred if the employee agrees to repay the
404 advance.

405 Section 11. Section **31A-32a-105** is amended to read:

406 **31A-32a-105. Withdrawals -- Termination -- Transfers.**

407 (1) Subject to Subsection (3), if the employee or account holder withdraws money for
408 any purpose other than a medical expense at any time in which the balance in the account is
409 below \$4,000 [~~all of the following apply~~]:

410 (a) the amount of the withdrawal [~~is income for the purposes of Title 59, Chapter 10,~~
411 ~~Individual Income Tax Act~~] shall be added to adjusted gross income in accordance with
412 Section 59-10-114; and

413 (b) the administrator shall withhold from the amount of the withdrawal, and on behalf
414 of the employee or account holder shall pay a penalty to the State Tax Commission equal to
415 10% of the amount of the withdrawal.

416 (2) If an employee or account holder withdraws money from the employee's or account
417 holder's medical care savings account for any purpose other than a medical expense, but the
418 withdrawal occurs when the balance in the medical care savings account is over \$4,000, and
419 the withdrawal will not result in the account balance dropping below \$4,000, the amount of the
420 withdrawal:

421 (a) is not subject to the penalties described in Subsection (1)(b); and

422 [~~(b) is subject to taxation as provided in Subsection (1)(a).~~]

423 (b) shall be added to adjusted gross income in accordance with Section 59-10-114.

424 (3) The amount of a disbursement of any assets of a medical care savings account
425 pursuant to a filing for protection under [~~Title 11 of the United States Code,~~] 11 U.S.C. Sec.
426 101 to 1330, by an employee, account holder, or person for whose benefit the account was
427 established:

428 (a) is not considered a withdrawal for purposes of this section; and

429 [~~(b) is subject to taxation under Title 59, Chapter 10, Individual Income Tax Act.~~]

430 (b) shall be added to adjusted gross income in accordance with Section 59-10-114.

431 (4) (a) Upon the death of the employee or account holder, the account administrator
432 shall distribute the principal and accumulated interest of the medical care savings account to
433 the estate of the employee or account holder.

434 (b) A distribution under this Subsection (4) is not subject to the penalties described in
435 Subsection (1)(b).

436 (5) (a) If an employee is no longer employed by an employer that participates in a
437 medical care savings account program, and if the employee's account is administered by the
438 employer's account administrator, the money in the medical care savings account may be used
439 for the benefit of the employee or the employee's dependents in accordance with this chapter,
440 and ~~[remains exempt from taxation]~~ may not be added to adjusted gross income under Section
441 59-10-114 if the employee, not more than 60 days after the employee's final day of
442 employment:

443 (i) transfers the account to a new account administrator; or

444 (ii) (A) requests in writing to the former employer's account administrator that the
445 account remain with that administrator; and

446 (B) the account administrator agrees to retain the account.

447 (b) Not more than 30 days after the expiration of the 60 days described in Subsection
448 (5)(a), if an account administrator has not accepted the former employee's account, the
449 employer shall mail a check to the former employee at the employee's last-known address equal
450 to the amount in the account on that day.

451 (c) The amount mailed to the employee ~~[is subject to taxation pursuant to Subsection~~
452 ~~(4)(a)]~~ shall be added to adjusted gross income in accordance with
453 Section 59-10-114, but is not subject to the penalties under Subsection (1)(b).

454 (d) If an employee becomes employed with a different employer that participates in a
455 medical care savings account program, the employee may transfer the employee's medical care
456 savings account to that new employer's account administrator.

457 (e) If an account holder becomes an employee of an employer that participates in a
458 medical care savings account program, the account holder may transfer the account holder's
459 account to the employer's account administrator.

460 Section 12. Section **31A-32a-106** is amended to read:

461 **31A-32a-106. Regulation of account administrators -- Administration of addition**

462 **to adjusted gross income and tax credit -- Rulemaking authority.**

463 (1) The department shall regulate account administrators and may adopt rules
464 necessary to administer this chapter.

465 (2) The State Tax Commission may adopt rules necessary to monitor and implement
466 the ~~[tax deductions established by this chapter and Section 59-10-114.]~~:

467 (a) amounts required to be added to adjusted gross income in accordance with Sections
468 31A-32a-105 and 59-10-114; or

469 (b) amount claimed as a tax credit in accordance with Section 59-10-1021.

470 Section 13. Section **31A-32a-107** is amended to read:

471 **31A-32a-107. Penalties for noncompliance with tax provisions.**

472 (1) An account administrator who fails to comply with [the statutes and rules
473 governing the tax deduction established by this chapter and Section 59-10-114] a provision
474 described in Subsection (2) is subject to:

475 ~~[(1)]~~ (a) the civil penalties provided in Section 59-1-401; and

476 ~~[(2)]~~ (b) interest at the rate and in the manner provided in Section 59-1-402.

477 (2) The following provisions apply to Subsection (1):

478 (a) a provision of this chapter relating to:

479 (i) an addition to income made in accordance with Section 59-10-114; or

480 (ii) a tax credit allowed by Section 59-10-1021; or

481 (b) a provision of Title 59, Chapter 10, Individual Income Tax Act, relating to:

482 (i) an addition to income made in accordance with Section 59-10-114; or

483 (ii) a tax credit allowed by Section 59-10-1021.

484 Section 14. Section **48-2c-117** is amended to read:

485 **48-2c-117. Taxation of limited liability companies.**

486 A company established under this chapter or a foreign company transacting business in
487 this state shall be taxed as provided in ~~[Section 59-10-801]~~ Subsection 59-10-1403(4).

488 Section 15. Section **53B-8a-106** is amended to read:

489 **53B-8a-106. Account agreements.**

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

492 (1) (a) An account agreement may require an account owner to agree to invest a

493 specific amount of money in the Utah Educational Savings Plan Trust for a specific period of
494 time for the benefit of a specific beneficiary, not to exceed an amount determined by the
495 program administrator.

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

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

501 (d) Subject to Subsection (1)(f), the maximum amount of a qualified investment that a
502 corporation that is an account owner may subtract from unadjusted income for a taxable year in
503 accordance with Title 59, Chapter 7, Corporate Franchise and Income Taxes, is [~~\$1,560~~]
504 \$1,650 for each individual beneficiary for the taxable year beginning on or after January 1,
505 [~~2006~~] 2008, but beginning on or before December 31, [~~2006~~] 2008.

506 (e) Subject to Subsection (1)(f), the maximum amount of a qualified investment that
507 may be [~~subtracted from federal taxable income of a resident or nonresident individual for a~~
508 ~~taxable year in accordance with Section 59-10-114, a resident or nonresident estate or trust for~~
509 ~~a taxable year in accordance with Section 59-10-202, or]~~ used as the basis for claiming a tax
510 credit [~~for a taxable year by a resident or nonresident individual]~~ in accordance with Section
511 [~~59-10-1206.1~~] 59-10-1017, is:

512 (i) for a resident or nonresident estate or trust that is an account owner, [~~\$1,560~~] \$1,650
513 for each individual beneficiary for the taxable year beginning on or after January 1, [~~2006~~]
514 2008, but beginning on or before December 31, [~~2006~~] 2008;

515 (ii) for a resident or nonresident individual that is an account owner, other than a
516 husband and wife who are account owners and file a single return jointly, [~~\$1,560~~] \$1,650 for
517 each individual beneficiary for the taxable year beginning on or after January 1, [~~2006~~] 2008,
518 but beginning on or before December 31, [~~2006~~] 2008; or

519 (iii) for a husband and wife who are account owners and file a single return jointly,
520 [~~\$3,120~~] \$3,300 for each individual beneficiary:

521 (A) for the taxable year beginning on or after January 1, [~~2006~~] 2008, but beginning on
522 or before December 31, [~~2006~~] 2008; and

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

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

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

526 (f) (i) For taxable years beginning on or after January 1, [~~2007~~] 2009, the program
527 administrator shall increase or decrease the maximum amount of a qualified investment
528 described in Subsections (1)(d) and (1)(e)(i) and (ii), by a percentage equal to the percentage
529 difference between the consumer price index for the preceding calendar year and the consumer
530 price index for the calendar year [~~2005~~] 2007.

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

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

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

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

541 (II) two.

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

545 (2) (a) (i) Beneficiaries designated in account agreements must be designated after
546 birth and before age 19 for an account owner to:

547 (A) subtract a qualified investment from income under[~~:(f)~~] Title 59, Chapter 7,
548 Corporate Franchise and Income Taxes; or

549 [~~(H) Section 59-10-114; or~~]

550 [~~(H) Section 59-10-202; or~~]

551 (B) use a qualified investment as the basis for claiming a tax credit in accordance with
552 Section [~~59-10-1206.1~~] 59-10-1017.

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

555 birthday.

556 (b) (i) Account owners may designate [~~beneficiaries~~] a beneficiary age 19 or older, but
557 investments for [~~those beneficiaries~~] that beneficiary are not eligible [~~for subtraction from~~
558 ~~federal taxable income.~~] to be:

559 (A) subtracted from income under Title 59, Chapter 7, Corporate Franchise and Income
560 Taxes; or

561 (B) used as the basis for claiming a tax credit in accordance with Section 59-10-1017.

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

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

568 (4) Each account agreement shall provide that:

569 (a) [~~no~~] a contributor to, or designated beneficiary under, an account agreement may
570 not direct the investment of any contributions or earnings on contributions;

571 (b) [~~no~~] any part of the money in any account may not be used as security for a loan;
572 and

573 (c) [~~no~~] an account owner may not borrow from the Utah Educational Savings Plan
574 Trust.

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

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

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

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

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

585 (6) [~~Beneficiaries~~] A beneficiary may be changed as permitted by the rules and

586 regulations of the board upon written request of the account owner prior to the date of
 587 admission of any beneficiary under an account agreement by an institution of higher education
 588 so long as the substitute beneficiary is eligible for participation.

589 (7) ~~[Account agreements]~~ An account agreement may be freely amended throughout
 590 ~~[their terms]~~ the term of the account agreement in order to enable ~~[account owners]~~ an account
 591 owner to increase or decrease the level of participation, change the designation of beneficiaries,
 592 and carry out similar matters as authorized by rule.

593 (8) Each account agreement shall provide that:

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

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

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

600 **59-10-103. Definitions.**

601 (1) As used in this chapter:

602 (a) "Adjusted gross income":

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

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

607 ~~[(b) "Adoption expenses" means:]~~

608 ~~[(i) any actual medical and hospital expenses of the mother of the adopted child which
 609 are incident to the child's birth;]~~

610 ~~[(ii) any welfare agency fees or costs;]~~

611 ~~[(iii) any child placement service fees or costs;]~~

612 ~~[(iv) any legal fees or costs; or]~~

613 ~~[(v) any other fees or costs relating to an adoption.]~~

614 ~~[(c) "Adult with a disability" means an individual who:]~~

615 ~~[(i) is 18 years of age or older;]~~

616 ~~[(ii) is eligible for services under Title 62A, Chapter 5, Services for People with~~

617 Disabilities; and]

618 ~~[(iii) is not enrolled in:]~~

619 ~~[(A) an education program for students with disabilities that is authorized under~~

620 ~~Section 53A-15-301; or]~~

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

622 ~~[(d) (i) For purposes of Subsection 59-10-114(2)(1), "capital gain transaction" means a~~

623 ~~transaction that results in a:]~~

624 ~~[(A) short-term capital gain; or]~~

625 ~~[(B) long-term capital gain:]~~

626 ~~[(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~

627 ~~the commission may by rule define the term "transaction."]~~

628 ~~[(e) "Commercial domicile" means the principal place from which the trade or business~~

629 ~~of a Utah small business corporation is directed or managed:]~~

630 ~~[(f)] (b) "Corporation" includes:~~

631 ~~(i) [associations] an association;~~

632 ~~(ii) a joint stock [companies] company; and~~

633 ~~(iii) an insurance [companies] company.~~

634 ~~[(g) "Dependent child with a disability" means an individual 21 years of age or younger~~

635 ~~who:]~~

636 ~~[(i) (A) is diagnosed by a school district representative under rules adopted by the State~~

637 ~~Board of Education as having a disability classified as:]~~

638 ~~[(I) autism;]~~

639 ~~[(II) deafness;]~~

640 ~~[(III) preschool developmental delay;]~~

641 ~~[(IV) dual sensory impairment;]~~

642 ~~[(V) hearing impairment;]~~

643 ~~[(VI) intellectual disability;]~~

644 ~~[(VII) multidisability;]~~

645 ~~[(VIII) orthopedic impairment;]~~

646 ~~[(IX) other health impairment;]~~

647 ~~[(X) traumatic brain injury; or]~~

648 ~~[(XI) visual impairment;]~~
649 ~~[(B) is not receiving residential services from;]~~
650 ~~[(F) the Division of Services for People with Disabilities created under Section~~
651 ~~62A-5-102; or]~~
652 ~~[(H) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;~~
653 ~~and]~~
654 ~~[(C) is enrolled in;]~~
655 ~~[(I) an education program for students with disabilities that is authorized under Section~~
656 ~~53A-15-301; or]~~
657 ~~[(H) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;~~
658 ~~or]~~
659 ~~[(ii) is identified under guidelines of the Department of Health as qualified for;]~~
660 ~~[(A) Early Intervention; or]~~
661 ~~[(B) Infant Development Services;]~~
662 ~~[(h) (c) "Distributable net income" is as defined in Section 643, Internal Revenue~~
663 ~~Code.~~
664 ~~[(i) (d) "Employee" is as defined in Section 59-10-401.~~
665 ~~[(j) (e) "Employer" is as defined in Section 59-10-401.~~
666 ~~[(k) (f) "Federal taxable income":~~
667 (i) for a resident or nonresident individual, means taxable income as defined by Section
668 63, Internal Revenue Code; or
669 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
670 (b), Internal Revenue Code.
671 ~~[(t) (g) "Fiduciary" means:~~
672 (i) a guardian;
673 (ii) a trustee;
674 (iii) an executor;
675 (iv) an administrator;
676 (v) a receiver;
677 (vi) a conservator; or
678 (vii) any person acting in any fiduciary capacity for any individual.

679 (h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

680 ~~[(m)]~~ (i) "Homesteaded land diminished from the Uintah and Ouray Reservation"

681 means the homesteaded land that was held to have been diminished from the Uintah and Ouray
682 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

683 ~~[(n)]~~ (j) "Individual" means a natural person and includes aliens and minors.

684 ~~[(o)]~~ (k) "Irrevocable trust" means a trust in which the settlor may not revoke or
685 terminate all or part of the trust without the consent of a person who has a substantial beneficial
686 interest in the trust and the interest would be adversely affected by the exercise of the settlor's
687 power to revoke or terminate all or part of the trust.

688 ~~[(p) For purposes of Subsection 59-10-114(2)(1), "long-term capital gain" is as defined~~
689 ~~in Section 1222, Internal Revenue Code.]~~

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

691 ~~[(q)]~~ (m) "Nonresident individual" means an individual who is not a resident of this
692 state.

693 ~~[(r)]~~ (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not
694 a resident estate or trust.

695 ~~[(s)]~~ (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
696 unincorporated organization:

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

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

700 (I) a trust;

701 (II) an estate; or

702 (III) a corporation.

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

705 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
706 organization described in Subsection (1)~~[(s)]~~(o)(i).

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

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

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

710 ~~[(iii) the following if the member is assigned to a unit that is located in the state:]~~
711 ~~[(A) The Army Reserve;]~~
712 ~~[(B) The Naval Reserve;]~~
713 ~~[(C) The Air Force Reserve;]~~
714 ~~[(D) The Marine Corps Reserve; or]~~
715 ~~[(E) The Coast Guard Reserve.]~~
716 ~~[(u) "Qualifying stock" means stock that is:]~~
717 ~~[(i) (A) common; or]~~
718 ~~[(B) preferred;]~~
719 ~~[(ii) as defined by the commission by rule, originally issued to:]~~
720 ~~[(A) a resident or nonresident individual; or]~~
721 ~~[(B) a partnership if the resident or nonresident individual making a subtraction from~~
722 ~~federal taxable income in accordance with Subsection 59-10-114(2)(1):]~~
723 ~~[(F) was a partner when the stock was issued; and]~~
724 ~~[(H) remains a partner until the last day of the taxable year for which the resident or~~
725 ~~nonresident individual makes the subtraction from federal taxable income in accordance with~~
726 ~~Subsection 59-10-114(2)(1); and]~~
727 ~~[(iii) issued:]~~
728 ~~[(A) by a Utah small business corporation;]~~
729 ~~[(B) on or after January 1, 2003; and]~~
730 ~~[(C) for:]~~
731 ~~[(F) money; or]~~
732 ~~[(H) other property, except for stock or securities.]~~
733 (p) "Qualified nongrantor charitable lead trust" means a trust:
734 (i) that is irrevocable;
735 (ii) that has a trust term measured by:
736 (A) a fixed term of years; or
737 (B) the life of a person living on the day on which the trust is created;
738 (iii) under which:
739 (A) a portion of the value of the trust assets is distributed during the trust term;
740 (I) to an organization described in Section 170(c), Internal Revenue Code; and

- 741 (II) as a:
 742 (Aa) guaranteed annuity interest; or
 743 (Bb) unitrust interest; and
 744 (B) assets remaining in the trust at the termination of the trust term are distributed to a
 745 beneficiary:
 746 (I) designated in the trust; and
 747 (II) that is not an organization described in Section 170(c), Internal Revenue Code;
 748 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue
 749 Code; and
 750 (v) under which the grantor of the trust is not treated as the owner of any portion of the
 751 trust for federal income tax purposes.
- 752 ~~[(v)]~~ (q) (i) "Resident individual" means:
 753 (A) an individual who is domiciled in this state for any period of time during the
 754 taxable year, but only for the duration of the period during which the individual is domiciled in
 755 this state; or
 756 (B) an individual who is not domiciled in this state but:
 757 (I) maintains a permanent place of abode in this state; and
 758 (II) spends in the aggregate 183 or more days of the taxable year in this state.
 759 (ii) For purposes of Subsection (1)~~[(v)]~~ (q)(i)(B), a fraction of a calendar day shall be
 760 counted as a whole day.
- 761 ~~[(w)]~~ (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.
 762 ~~[(x) For purposes of Subsection 59-10-114(2)(1), "short-term capital gain" is as defined~~
 763 ~~in Section 1222, Internal Revenue Code.]~~
- 764 (s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.
 765 (t) "State income tax percentage for a nonresident estate or trust" means a percentage
 766 equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the
 767 nonresident estate's or trust's total adjusted gross income for that taxable year after making the
 768 adjustments required by:
 769 (i) Section 59-10-202;
 770 (ii) Section 59-10-207;
 771 (iii) Section 59-10-209.1; or

772 (iv) Section 59-10-210;

773 (u) "State income tax percentage for a nonresident individual" means a percentage
774 equal to a nonresident individual's state taxable income for the taxable year divided by the
775 difference between:

776 (i) the nonresident individual's total adjusted gross income for that taxable year, after
777 making the:

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

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

780 (ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember,
781 the compensation the servicemember receives for military service if the servicemember is
782 serving in compliance with military orders.

783 (v) "State income tax percentage for a part-year resident individual" means, for a
784 taxable year, a fraction:

785 (i) the numerator of which is the sum of:

786 (A) subject to Subsections 59-10-1404(3) and (4), for the time period during the
787 taxable year that the part-year resident individual is a resident, the part-year resident
788 individual's total adjusted gross income for that time period, after making the:

789 (I) additions and subtractions required by Section 59-10-114; and

790 (II) adjustments required by Section 59-10-115; and

791 (B) for the time period during the taxable year that the part-year resident individual is a
792 nonresident, an amount calculated by:

793 (I) determining the part-year resident individual's adjusted gross income for that time
794 period, after making the:

795 (Aa) additions and subtractions required by Section 59-10-114; and

796 (Bb) adjustments required by Section 59-10-115; and

797 (II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I)
798 that is derived from Utah sources in accordance with Section 59-10-117; and

799 (ii) the denominator of which is the difference between:

800 (A) the part-year resident individual's total adjusted gross income for that taxable year,
801 after making the:

802 (I) additions and subtractions required by Section 59-10-114; and

803 (II) adjustments required by Section 59-10-115; and
804 (B) if the part-year resident individual is a servicemember, any compensation the
805 servicemember receives for military service during the portion of the taxable year that the
806 servicemember is a nonresident if the servicemember is serving in compliance with military
807 orders.

808 ~~[(v)]~~ (w) "Taxable income" or "state taxable income":
809 (i) subject to Subsection ~~[59-10-302(2)]~~ 59-10-1404(3), for a resident individual ~~[other~~
810 ~~than a resident individual described in Subsection (1)(y)(iii)]~~, means the resident individual's
811 ~~[federal taxable]~~ adjusted gross income after making the:
812 (A) additions and subtractions required by Section 59-10-114; and
813 (B) adjustments required by Section 59-10-115;
814 (ii) for a nonresident individual ~~[other than a nonresident individual described in~~
815 ~~Subsection (1)(y)(iii), is as defined in Section 59-10-116;]~~, is an amount calculated by:
816 (A) determining the nonresident individual's adjusted gross income for the taxable
817 year, after making the:
818 (I) additions and subtractions required by Section 59-10-114; and
819 (II) adjustments required by Section 59-10-115; and
820 (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A)
821 that is derived from Utah sources in accordance with Section 59-10-117;
822 ~~[(iii) for a resident or nonresident individual that collects and pays a tax described in~~
823 ~~Part 12, Single Rate Individual Income Tax Act, is as defined in Section 59-10-1202;]~~
824 ~~[(iv)]~~ (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and
825 ~~[(v)]~~ (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.
826 ~~[(z)]~~ (x) "Taxpayer" means any individual, estate, ~~[or]~~ trust, or beneficiary of an estate
827 or trust, ~~[whose income is]~~ that has income subject in whole or part to the tax imposed by this
828 chapter.

829 (y) "Trust term" means a time period:
830 (i) beginning on the day on which a qualified nongrantor charitable lead trust is
831 created; and
832 (ii) ending on the day on which the qualified nongrantor charitable lead trust described
833 in Subsection (1)(y)(i) terminates.

834 ~~[(aa)]~~ (z) "Uintah and Ouray Reservation" means the lands recognized as being
835 included within the Uintah and Ouray Reservation in:
836 (i) Hagen v. Utah, 510 U.S. 399 (1994); and
837 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).
838 ~~[(bb) (i) "Utah small business corporation" means a corporation that:]~~
839 ~~[(A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue~~
840 ~~Code;]~~
841 ~~[(B) except as provided in Subsection (1)(bb)(ii), meets the requirements of Section~~
842 ~~1244(c)(1)(C), Internal Revenue Code, and]~~
843 ~~[(C) has its commercial domicile in this state.]~~
844 ~~[(ii) Notwithstanding Subsection (1)(bb)(i)(B), the time period described in Section~~
845 ~~1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a~~
846 ~~corporation's aggregate gross receipts shall end on the last day of the taxable year for which the~~
847 ~~resident or nonresident individual makes a subtraction from federal taxable income in~~
848 ~~accordance with Subsection 59-10-114(2)(i).]~~
849 (aa) "Unadjusted income" means an amount equal to the difference between:
850 (i) the total income required to be reported by a resident or nonresident estate or trust
851 on the resident or nonresident estate's or trust's federal income tax return for estates and trusts
852 for the taxable year; and
853 (ii) the sum of the following:
854 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:
855 (I) for administering the resident or nonresident estate or trust; and
856 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or
857 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
858 year;
859 (B) the income distribution deduction that a resident or nonresident estate or trust
860 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or
861 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
862 year;
863 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for
864 estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as

865 allowed on the resident or nonresident estate's or trust's federal income tax return for estates
 866 and trusts for the taxable year; and

867 (D) the amount that a resident or nonresident estate or trust deducts as a personal
 868 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or
 869 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
 870 year.

871 (bb) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

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

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

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

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

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

882 (c) Any reference to a specific section of the Internal Revenue Code or other provision
 883 of the laws of the United States relating to federal income taxes shall include any
 884 corresponding or comparable provisions of the Internal Revenue Code as [hereafter] amended,
 885 redesignated, or reenacted.

886 Section 17. Section **59-10-104** is amended to read:

887 **59-10-104. Tax basis -- Tax rate -- Exemption.**

888 (1) [~~Except as provided in Subsection (5) or Part 12, Single Rate Individual Income~~
 889 ~~Tax Act, for] For taxable years beginning on or after January 1, [2006] 2008, [~~but beginning on~~
 890 ~~or before December 31, 2007;~~] a tax is imposed on the state taxable income of [every] a
 891 resident individual as provided in this section.~~

892 [~~(2) For an individual, other than a husband and wife or head of household required to~~
 893 ~~use the tax table under Subsection (3), the tax under this section is imposed in accordance with~~
 894 ~~the following income brackets:]~~

895 [If the state taxable income is: _____ The tax is:]

896 [~~Less than or equal to \$1,000~~ ~~2.3% of the state taxable income~~]
 897 [~~Greater than \$1,000 but less than~~ ~~\$23, plus 3.3% of state taxable~~
 898 ~~income greater than \$1,000~~]
 899 [~~Greater than \$2,000 but less than~~ ~~\$56, plus 4.2% of state taxable~~
 900 ~~income greater than \$2,000~~]
 901 [~~Greater than \$3,000 but less than~~ ~~\$98, plus 5.2% of state taxable~~
 902 ~~income greater than \$3,000~~]
 903 [~~Greater than \$4,000 but less than~~ ~~\$150, plus 6% of state taxable~~
 904 ~~income greater than \$4,000~~]
 905 [~~Greater than \$5,500~~ ~~\$240, plus 6.98% of state taxable~~
 906 ~~income greater than \$5,500~~]

907 [~~(3) For a husband and wife filing a single return jointly, or a head of household as~~
 908 ~~defined in Section 2(b), Internal Revenue Code, filing a single return, the tax under this section~~
 909 ~~is imposed in accordance with the following income brackets:]~~

910 [~~If the state taxable income is:~~ ~~The tax is:]~~
 911 [~~Less than or equal to \$2,000~~ ~~2.3% of the state taxable income~~]
 912 [~~Greater than \$2,000 but less than~~ ~~\$46, plus 3.3% of state taxable~~
 913 ~~income greater than \$2,000~~]
 914 [~~Greater than \$4,000 but less than~~ ~~\$112, plus 4.2% of state taxable~~
 915 ~~income greater than \$4,000~~]
 916 [~~Greater than \$6,000 but less than~~ ~~\$196, plus 5.2% of state taxable~~
 917 ~~income greater than \$6,000~~]
 918 [~~Greater than \$8,000 but less than~~ ~~\$300, plus 6% of state taxable~~
 919 ~~income greater than \$8,000~~]
 920 [~~Greater than \$11,000~~ ~~\$480, plus 6.98% of state taxable~~
 921 ~~income greater than \$11,000~~]

922 [~~(4) (a) For taxable years beginning on or after January 1, 2009, the commission shall:]~~
 923 [~~(i) make the following adjustments to the income brackets under Subsection (2):~~]
 924 [~~(A) increase or decrease the income brackets under Subsection (2) by a percentage~~
 925 ~~equal to the percentage difference between the consumer price index for the preceding calendar~~
 926 ~~year and the consumer price index for the calendar year 2007; and]~~

927 ~~[(B) after making an increase or decrease under Subsection (4)(a)(i)(A), round the~~
 928 ~~income brackets under Subsection (2) to the nearest whole dollar;]~~

929 ~~[(ii) after making the adjustments described in Subsection (4)(a)(i) to the income~~
 930 ~~brackets under Subsection (2), adjust the income brackets under Subsection (3) so that for each~~
 931 ~~income bracket under Subsection (2) there is a corresponding income bracket under Subsection~~
 932 ~~(3) that is equal to the product of:]~~

933 ~~[(A) each income bracket under Subsection (2); and]~~

934 ~~[(B) two; and]~~

935 ~~[(iii) to the extent necessary to reflect an adjustment under Subsection (4)(a)(i) or (ii):]~~

936 ~~[(A) increase or decrease the amount of tax under Subsection (2) or (3) prior to adding~~
 937 ~~in the portion of the tax calculated as a percentage of state taxable income; and]~~

938 ~~[(B) after making an increase or decrease under Subsection (4)(a)(iii)(A), round the~~
 939 ~~amount of tax under Subsection (2) or (3) to the nearest whole dollar.]~~

940 ~~[(b) The commission may not increase or decrease the tax rate percentages provided in~~
 941 ~~Subsection (2) or (3).]~~

942 ~~[(c) For purposes of Subsection (4)(a)(i), the commission shall calculate the consumer~~
 943 ~~price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.]~~

944 (2) For purposes of Subsection (1), for a taxable year, the tax is an amount equal to the
 945 product of:

946 (a) the resident individual's state taxable income for that taxable year; and

947 (b) 5%.

948 ~~[(5)] (3) This section does not apply to a resident individual exempt from taxation~~
 949 ~~under Section 59-10-104.1.~~

950 Section 18. Section **59-10-104.1** is amended to read:

951 **59-10-104.1. Exemption from taxation.**

952 (1) For purposes of this section:

953 (a) "Personal exemptions" means the total exemption amount an individual is allowed
 954 to claim for the taxable year under Section 151, Internal Revenue Code, for:

955 (i) the individual;

956 (ii) the individual's spouse; and

957 (iii) the individual's dependents.

958 (b) "Standard deduction":

959 (i) [~~except as provided in Subsection (1)(b)(ii);~~] means the standard deduction an
960 individual is allowed to claim for the taxable year under Section 63, Internal Revenue Code;
961 and

962 (ii) notwithstanding Subsection (1)(b)(i), does not include an additional amount
963 allowed under Section 63(f), Internal Revenue Code, for an individual or an individual's spouse
964 who is:

965 (A) blind; or

966 (B) 65 years of age or older.

967 (2) For taxable years beginning on or after January 1, 2002, an individual is exempt
968 from a tax imposed by Section 59-10-104 or 59-10-116 [~~or described in Section 59-10-1203~~]
969 if the individual's adjusted gross income on the individual's federal individual income tax
970 return for the taxable year is less than or equal to the sum of the individual's:

971 (a) personal exemptions for that taxable year; and

972 (b) standard deduction for that taxable year.

973 Section 19. Section **59-10-110** is amended to read:

974 **59-10-110. Disallowance of federal tax credits.**

975 [~~No~~] A credit applied directly to the income tax calculated for federal income tax
976 purposes [~~pursuant to~~] in accordance with the Internal Revenue Code [~~shall~~] may not be
977 applied in calculating the tax due under this chapter.

978 Section 20. Section **59-10-114** is amended to read:

979 **59-10-114. Additions to and subtractions from adjusted gross income of an**
980 **individual.**

981 (1) There shall be added to [~~federal taxable~~] adjusted gross income of a resident or
982 nonresident individual:

983 [~~(a) the amount of any income tax imposed by this or any predecessor Utah individual~~
984 ~~income tax law and the amount of any income tax imposed by the laws of another state, the~~
985 ~~District of Columbia, or a possession of the United States, to the extent deducted from adjusted~~
986 ~~gross income in determining federal taxable income;~~]

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

989 ~~[(e)]~~ (b) ~~[for taxable years beginning on or after January 1, 2002,]~~ the amount of a
990 child's income calculated under Subsection ~~[(5)]~~ (4) that:

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

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

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

997 ~~[(e)]~~ (c) (i) a withdrawal from a medical care savings account and any penalty imposed
998 ~~[in]~~ for the taxable year if:

999 ~~[(i)]~~ (A) the resident or nonresident individual ~~[did]~~ does not deduct ~~[or include]~~ the
1000 amounts on the resident or nonresident individual's federal individual income tax return
1001 ~~[pursuant to]~~ under Section 220, Internal Revenue Code;

1002 ~~[(ii)]~~ (I) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

1003 ~~[(iii)]~~ (II) the withdrawal is ~~[deducted by]~~:

1004 (Aa) subtracted on a return the resident or nonresident individual ~~[under Subsection~~
1005 ~~(2)(h);]~~ files under this chapter for a taxable year beginning on or before December 31, 2007;
1006 or

1007 (Bb) used as the basis for a resident or nonresident individual to claim a tax credit
1008 under Section 59-10-1021;

1009 (ii) a disbursement required to be added to adjusted gross income in accordance with
1010 Subsection 31A-32a-105(3); or

1011 (iii) an amount required to be added to adjusted gross income in accordance with
1012 Subsection 31A-32a-105(5)(c);

1013 ~~[(f)]~~ (d) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
1014 Incentive Program, from the account of a resident or nonresident individual who is an account
1015 owner as defined in Section 53B-8a-102, for the taxable year for which the amount is
1016 withdrawn, if that amount withdrawn from the account of the resident or nonresident individual
1017 who is the account owner:

1018 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and

1019 (ii) is:

1020 (A) subtracted by the resident or nonresident individual:
1021 (I) who is the account owner; and
1022 [~~(H)~~ in accordance with Subsection (2)(i); or]
1023 (II) on the resident or nonresident individual's return filed under this chapter for a
1024 taxable year beginning on or before December 31, 2007; or
1025 (B) used as the basis for the resident or nonresident individual who is the account
1026 owner to claim a tax credit under Section [~~59-10-1206.1~~] 59-10-1017;
1027 [~~(g)~~ (e) except as provided in Subsection (6), [~~for taxable years beginning on or after~~
1028 ~~January 1, 2003;~~] for bonds, notes, and other evidences of indebtedness acquired on or after
1029 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
1030 one or more of the following entities:
1031 (i) a state other than this state;
1032 (ii) the District of Columbia;
1033 (iii) a political subdivision of a state other than this state; or
1034 (iv) an agency or instrumentality of an entity described in Subsections (1)[~~(g)~~](e)(i)
1035 through (iii);
1036 [~~(h)~~ (f) subject to Subsection (2)[~~(n)~~](c), any distribution received by a resident
1037 beneficiary of a resident trust of income that was taxed at the trust level for federal tax
1038 purposes, but was subtracted from state taxable income of the trust pursuant to Subsection
1039 59-10-202(2)[~~(e)~~](b);
1040 [~~(i)~~ (g) any distribution received by a resident beneficiary of a nonresident trust of
1041 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
1042 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
1043 was not taxed at the trust level by any state, with undistributed distributable net income
1044 considered to be distributed from the most recently accumulated undistributed distributable net
1045 income; and
1046 [~~(j)~~ (h) any adoption expense:
1047 (i) for which a resident or nonresident individual receives reimbursement from another
1048 person; and
1049 (ii) to the extent to which the resident or nonresident individual [~~deducts~~] subtracts that
1050 adoption expense:

1051 ~~[(A) under Subsection (2)(c); or]~~
1052 (A) on a return filed under this chapter for a taxable year beginning on or before
1053 December 31, 2007; or
1054 (B) from federal taxable income on a federal individual income tax return.
1055 (2) There shall be subtracted from ~~[federal taxable]~~ adjusted gross income of a resident
1056 or nonresident individual:
1057 (a) the difference between:
1058 ~~[(a)]~~ (i) the interest or a dividend on [obligations or securities] an obligation or security
1059 of the United States [and its possessions or of any] or an authority, commission, [or]
1060 instrumentality, or possession of the United States, to the extent that interest or dividend is:
1061 (A) included in adjusted gross income for federal income tax purposes for the taxable
1062 year [but]; and
1063 (B) exempt from state income taxes under the laws of the United States[~~, but the~~
1064 amount subtracted under this Subsection (2)(a) shall be reduced by]; and
1065 (ii) any interest on indebtedness incurred or continued to purchase or carry the
1066 [obligations or securities] obligation or security described in [this] Subsection (2)(a)(i)[~~, and by~~
1067 any expenses incurred in the production of ~~interest or dividend~~ income described in this
1068 Subsection (2)(a) to the extent that such expenses, including amortizable bond premiums, are
1069 deductible in determining federal taxable income];
1070 ~~[(b) 1/2 of the net amount of any income tax paid or payable to the United States after~~
1071 ~~all allowable credits, as reported on the United States individual income tax return of the~~
1072 ~~taxpayer for the same taxable year;]~~
1073 ~~[(c) the amount of adoption expenses for one of the following taxable years as elected~~
1074 ~~by the resident or nonresident individual:]~~
1075 ~~[(i) regardless of whether a court issues an order granting the adoption, the taxable year~~
1076 ~~in which the adoption expenses are:]~~
1077 ~~[(A) paid; or]~~
1078 ~~[(B) incurred;]~~
1079 ~~[(ii) the taxable year in which a court issues an order granting the adoption; or]~~
1080 ~~[(iii) any year in which the resident or nonresident individual may claim the federal~~
1081 ~~adoption expenses credit under Section 23, Internal Revenue Code;]~~

1082 ~~[(d) amounts received by taxpayers under age 65 as retirement income which, for~~
1083 ~~purposes of this section, means pensions and annuities, paid from an annuity contract~~
1084 ~~purchased by an employer under a plan which meets the requirements of Section 404(a)(2),~~
1085 ~~Internal Revenue Code, or purchased by an employee under a plan which meets the~~
1086 ~~requirements of Section 408, Internal Revenue Code, or paid by the United States, a state, or~~
1087 ~~political subdivision thereof, or the District of Columbia, to the employee involved or the~~
1088 ~~surviving spouse;]~~

1089 ~~[(e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500~~
1090 ~~personal retirement exemption;]~~

1091 ~~[(f) 75% of the amount of the personal exemption, as defined and calculated in the~~
1092 ~~Internal Revenue Code, for each dependent child with a disability and adult with a disability~~
1093 ~~who is claimed as a dependent on a taxpayer's return;]~~

1094 ~~[(g) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the~~
1095 ~~taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions;]~~

1096 ~~[(i) for:]~~

1097 ~~[(A) the taxpayer;]~~

1098 ~~[(B) the taxpayer's spouse; and]~~

1099 ~~[(C) the taxpayer's dependents; and]~~

1100 ~~[(ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or~~
1101 ~~213, Internal Revenue Code, in determining federal taxable income for the taxable year;]~~

1102 ~~[(h) (i) except as provided in this Subsection (2)(h), the amount of a contribution made~~
1103 ~~during the taxable year on behalf of the taxpayer to a medical care savings account and interest~~
1104 ~~earned on a contribution to a medical care savings account established pursuant to Title 31A,~~
1105 ~~Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by~~
1106 ~~the account administrator as provided in the Medical Care Savings Account Act, and if the~~
1107 ~~taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax~~
1108 ~~return pursuant to Section 220, Internal Revenue Code; and]~~

1109 ~~[(ii) a contribution deductible under this Subsection (2)(h) may not exceed either of the~~
1110 ~~following:]~~

1111 ~~[(A) the maximum contribution allowed under the Medical Care Savings Account Act~~
1112 ~~for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is~~

1113 covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that
1114 covers the other spouse, and each spouse has a medical care savings account; or]

1115 [~~(B)~~ the maximum contribution allowed under the Medical Care Savings Account Act
1116 for the tax year for taxpayers:]

1117 [~~(F)~~ who do not file a joint return; or]

1118 [~~(H)~~ who file a joint return, but do not qualify under Subsection (2)(h)(ii)(A);]

1119 [(i) subject to Subsection (1)(f), the amount of a qualified investment as defined in
1120 Section 53B-8a-102 that:]

1121 [(i) a resident or nonresident individual who is an account owner as defined in Section
1122 53B-8a-102 makes during the taxable year;]

1123 [(ii) the resident or nonresident individual described in Subsection (2)(i)(i) does not
1124 deduct on a federal individual income tax return; and]

1125 [(iii) does not exceed the maximum amount of the qualified investment that may be
1126 subtracted from federal taxable income for a taxable year in accordance with Subsections
1127 53B-8a-106(1)(e) and (f);]

1128 [(j) for taxable years beginning on or after January 1, 2000, any amounts paid for
1129 premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the
1130 amounts paid for long-term care insurance were not deducted under Section 213, Internal
1131 Revenue Code, in determining federal taxable income;]

1132 [~~(k)~~ (b) for taxable years beginning on or after January 1, 2000, if the conditions of
1133 Subsection [~~(4)~~] (3)(a) are met, the amount of income derived by a Ute tribal member:

1134 (i) during a time period that the Ute tribal member resides on homesteaded land
1135 diminished from the Uintah and Ouray Reservation; and

1136 (ii) from a source within the Uintah and Ouray Reservation;

1137 [~~(l)~~ (i) for taxable years beginning on or after January 1, 2003, the total amount of a
1138 resident or nonresident individual's short-term capital gain or long-term capital gain on a
1139 capital gain transaction:]

1140 [(A) that occurs on or after January 1, 2003;]

1141 [(B) if 70% or more of the gross proceeds of the capital gain transaction are expended:]

1142 [(f) to purchase qualifying stock in a Utah small business corporation; and]

1143 [(H) within a 12-month period after the day on which the capital gain transaction

1144 occurs; and]

1145 [~~(C) if, prior to the purchase of the qualifying stock described in Subsection~~

1146 ~~(2)(1)(i)(B)(F), the resident or nonresident individual did not have an ownership interest in the~~

1147 ~~Utah small business corporation that issued the qualifying stock; and]~~

1148 [~~(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~

1149 ~~the commission may make rules:]~~

1150 [~~(A) defining the term "gross proceeds"; and]~~

1151 [~~(B) for purposes of Subsection (2)(1)(i)(C), prescribing the circumstances under which~~

1152 ~~a resident or nonresident individual has an ownership interest in a Utah small business~~

1153 ~~corporation;]~~

1154 [~~(m) for the taxable year beginning on or after January 1, 2005, but beginning on or~~

1155 ~~before December 31, 2005, the first \$2,200 of income a qualifying military servicemember~~

1156 ~~receives:]~~

1157 [~~(i) for service:]~~

1158 [~~(A) as a qualifying military servicemember; or]~~

1159 [~~(B) under an order into active service in accordance with Section 39-1-5; and]~~

1160 [~~(ii) to the extent that income is included in adjusted gross income on that resident or~~

1161 ~~nonresident individual's federal individual income tax return for that taxable year;]~~

1162 [~~(n)~~ (c) an amount received by a resident or nonresident individual or distribution

1163 received by a resident or nonresident beneficiary of a resident trust:

1164 (i) if that amount or distribution constitutes a refund of taxes imposed by:

1165 (A) a state; or

1166 (B) the District of Columbia; and

1167 (ii) to the extent that amount or distribution is included in adjusted gross income for

1168 that taxable year on the federal individual income tax return of the resident or nonresident

1169 individual or resident or nonresident beneficiary of a resident trust;

1170 [~~(o)~~ (d) the amount of a railroad retirement benefit:

1171 (i) paid:

1172 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et

1173 seq.;

1174 (B) to a resident or nonresident individual; and

1175 (C) for the taxable year; and
1176 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
1177 that resident or nonresident individual's federal individual income tax return for that taxable
1178 year; and
1179 ~~[(p)]~~ (e) an amount:
1180 (i) received by an enrolled member of an American Indian tribe; and
1181 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
1182 part on that amount in accordance with:
1183 (A) federal law;
1184 (B) a treaty; or
1185 (C) a final decision issued by a court of competent jurisdiction.
1186 ~~[(3)(a) For purposes of Subsection (2)(d), the amount of retirement income subtracted~~
1187 ~~for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or~~
1188 ~~\$4,800, except that:]~~
1189 ~~[(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income~~
1190 ~~earned over \$32,000, the amount of the retirement income exemption that may be subtracted~~
1191 ~~shall be reduced by 50 cents;]~~
1192 ~~[(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income~~
1193 ~~earned over \$16,000, the amount of the retirement income exemption that may be subtracted~~
1194 ~~shall be reduced by 50 cents; and]~~
1195 ~~[(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over~~
1196 ~~\$25,000, the amount of the retirement income exemption that may be subtracted shall be~~
1197 ~~reduced by 50 cents;]~~
1198 ~~[(b) For purposes of Subsection (2)(e), the amount of the personal retirement~~
1199 ~~exemption shall be further reduced according to the following schedule:]~~
1200 ~~[(i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income~~
1201 ~~earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50~~
1202 ~~cents;]~~
1203 ~~[(ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income~~
1204 ~~earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50~~
1205 ~~cents; and]~~

1206 ~~[(iii) for individual taxpayers, for each \$1 of adjusted gross income earned over~~
1207 ~~\$25,000, the amount of the personal retirement exemption shall be reduced by 50 cents.]~~

1208 ~~[(c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be~~
1209 ~~calculated by adding to adjusted gross income any interest income not otherwise included in~~
1210 ~~adjusted gross income.]~~

1211 ~~[(d) For purposes of determining ownership of items of retirement income common~~
1212 ~~law doctrine will be applied in all cases even though some items may have originated from~~
1213 ~~service or investments in a community property state. Amounts received by the spouse of a~~
1214 ~~living retiree because of the retiree's having been employed in a community property state are~~
1215 ~~not deductible as retirement income of such spouse.]~~

1216 ~~[(e) For purposes of Subsection (2)(g), a subtraction for an amount paid for health care~~
1217 ~~insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:]~~

1218 ~~[(i) for an amount that is reimbursed or funded in whole or in part by the federal~~
1219 ~~government, the state, or an agency or instrumentality of the federal government or the state;~~
1220 ~~and]~~

1221 ~~[(ii) for a taxpayer who is eligible to participate in a health plan maintained and funded~~
1222 ~~in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.]~~

1223 ~~[(4)] (3) (a) A subtraction for an amount described in Subsection (2)~~[(4)](b)~~ is allowed~~
1224 ~~only if:~~

1225 (i) the taxpayer is a Ute tribal member; and

1226 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
1227 requirements of this Subsection ~~[(4)] (3).~~

1228 (b) The agreement described in Subsection ~~[(4)] (3)(a):~~

1229 (i) may not:

1230 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

1231 (B) provide a subtraction under this section greater than or different from the

1232 subtraction described in Subsection (2)~~[(4)](b)~~; or

1233 (C) affect the power of the state to establish rates of taxation; and

1234 (ii) shall:

1235 (A) provide for the implementation of the subtraction described in Subsection

1236 (2)~~[(4)](b)~~;

- 1237 (B) be in writing;
- 1238 (C) be signed by:
- 1239 (I) the governor; and
- 1240 (II) the chair of the Business Committee of the Ute tribe;
- 1241 (D) be conditioned on obtaining any approval required by federal law; and
- 1242 (E) state the effective date of the agreement.
- 1243 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 1244 year regarding whether or not an agreement meeting the requirements of this Subsection [~~(4)~~]
- 1245 (3) is in effect.
- 1246 (ii) If an agreement meeting the requirements of this Subsection [~~(4)~~] (3) is terminated,
- 1247 the subtraction permitted under Subsection (2)[~~(k)~~](b) is not allowed for taxable years
- 1248 beginning on or after the January 1 following the termination of the agreement.
- 1249 (d) For purposes of Subsection (2)[~~(k)~~](b) and in accordance with Title 63, Chapter
- 1250 46a, Utah Administrative Rulemaking Act, the commission may make rules:
- 1251 (i) for determining whether income is derived from a source within the Uintah and
- 1252 Ouray Reservation; and
- 1253 (ii) that are substantially similar to how adjusted gross income derived from Utah
- 1254 sources is determined under Section 59-10-117.
- 1255 [~~(5)~~] (4) (a) For purposes of this Subsection [~~(5)~~] (4), "Form 8814" means:
- 1256 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
- 1257 Interest and Dividends; or
- 1258 (ii) (A) [~~for taxable years beginning on or after January 1, 2002,~~] a form designated by
- 1259 the commission in accordance with Subsection [~~(5)~~] (4)(a)(ii)(B) as being substantially similar
- 1260 to 2000 Form 8814 if for purposes of federal individual income taxes the information
- 1261 contained on 2000 Form 8814 is reported on a form other than Form 8814; and
- 1262 (B) for purposes of Subsection [~~(5)~~] (4)(a)(ii)(A) and in accordance with Title 63,
- 1263 Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules
- 1264 designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal
- 1265 individual income taxes the information contained on 2000 Form 8814 is reported on a form
- 1266 other than Form 8814.
- 1267 (b) The amount of a child's income added to adjusted gross income under Subsection

1268 (1)~~(e)~~(b) is equal to the difference between:

1269 (i) the lesser of:

1270 (A) the base amount specified on Form 8814; and

1271 (B) the sum of the following reported on Form 8814:

1272 (I) the child's taxable interest;

1273 (II) the child's ordinary dividends; and

1274 (III) the child's capital gain distributions; and

1275 (ii) the amount not taxed that is specified on Form 8814.

1276 ~~(6)~~ (5) Notwithstanding Subsection (1)~~(g)~~(e), interest from bonds, notes, and other
1277 evidences of indebtedness issued by an entity described in Subsections (1)~~(g)~~(e)(i) through
1278 (iv) may not be added to ~~[federal taxable]~~ adjusted gross income of a resident or nonresident
1279 individual if, as annually determined by the commission:

1280 (a) for an entity described in Subsection (1)~~(g)~~(e)(i) or (ii), the entity and all of the
1281 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
1282 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

1283 (b) for an entity described in Subsection (1)~~(g)~~(e)(iii) or (iv), the following do not
1284 impose a tax based on income on any part of the bonds, notes, and other evidences of
1285 indebtedness of this state:

1286 (i) the entity; or

1287 (ii) (A) the state in which the entity is located; or

1288 (B) the District of Columbia, if the entity is located within the District of Columbia.

1289 Section 21. Section **59-10-115** is amended to read:

1290 **59-10-115. Adjustments to adjusted gross income.**

1291 (1) The commission shall allow an adjustment to ~~[federal taxable]~~ adjusted gross
1292 income of a ~~[taxpayer]~~ resident or nonresident individual if the ~~[taxpayer]~~ resident or
1293 nonresident individual would otherwise:

1294 (a) receive a double tax benefit under this part; or

1295 (b) suffer a double tax detriment under this part.

1296 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1297 commission may make rules to allow for the adjustment to ~~[federal taxable]~~ adjusted gross
1298 income required by Subsection (1).

1299 Section 22. Section **59-10-116** is amended to read:

1300 **59-10-116. Tax on nonresident individual -- Calculation -- Exemption.**

1301 [~~(1) For purposes of this section:~~]

1302 [~~(a) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.]~~]

1303 [~~(b) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.]~~]

1304 [~~(c) "State income tax percentage" means a percentage equal to a nonresident~~
1305 ~~individual's adjusted gross income for the taxable year received from Utah sources, as~~
1306 ~~determined under Section 59-10-117, divided by the difference between:]~~

1307 [~~(i) the nonresident individual's total adjusted gross income for that taxable year; and]~~

1308 [~~(ii) if the nonresident individual described in Subsection (1)(c)(i) is a servicemember,~~
1309 ~~the compensation the servicemember receives for military service if the servicemember is~~
1310 ~~serving in compliance with military orders:]~~

1311 [~~(d) "State taxable income" means a nonresident individual's federal taxable income~~
1312 ~~after making the:]~~

1313 [~~(i) additions and subtractions required by Section 59-10-114; and]~~

1314 [~~(ii) adjustments required by Section 59-10-115.]~~

1315 [~~(e) "Unapportioned state tax" means the product of the:]~~

1316 [~~(i) difference between:]~~

1317 [~~(A) a nonresident individual's state taxable income; and]~~

1318 [~~(B) if the nonresident individual described in Subsection (1)(c)(i)(A) is a~~
1319 ~~servicemember, compensation the servicemember receives for military service if the~~
1320 ~~servicemember is serving in compliance with military orders; and]~~

1321 [~~(ii) tax rate imposed under Section 59-10-104.]~~

1322 [~~(2) (1) Except as provided in Subsection [(3)] (2) [or Part 12, Single Rate Individual~~
1323 ~~Income Tax Act], a tax is imposed on a nonresident individual in an amount equal to the~~
1324 ~~product of the [nonresident individual's]:~~

1325 [~~(a) unapportioned state tax; and]~~

1326 [~~(b) state income tax percentage.]~~

1327 (a) nonresident individual's state taxable income; and

1328 (b) percentage listed in Subsection 59-10-104(2).

1329 [~~(3) (2) This section does not apply to a nonresident individual exempt from taxation~~]

1330 under Section 59-10-104.1.

1331 ~~[(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
1332 ~~for purposes of Subsection (1), the commission may by rule define what constitutes~~
1333 ~~compensation.]~~

1334 Section 23. Section **59-10-117** is amended to read:

1335 **59-10-117. State taxable income derived from Utah sources.**

1336 (1) For purposes of Section 59-10-116, ~~[adjusted gross]~~ state taxable income ~~[derived~~
1337 ~~from Utah sources]~~ includes those items includable in ~~[adjusted gross]~~ state taxable income
1338 attributable to or resulting from:

1339 (a) the ownership in this state of any interest in real or tangible personal property,
1340 including real property or property rights from which [²]gross income from mining[²] as
1341 defined by Section 613(c), Internal Revenue Code, is derived; or

1342 (b) the carrying on of a business, trade, profession, or occupation in this state.

1343 (2) For the purposes of Subsection (1):

1344 (a) income from intangible personal property, including annuities, dividends, interest,
1345 and gains from the disposition of intangible personal property shall constitute income derived
1346 from Utah sources only to the extent that [~~such~~] the income is from property employed in a
1347 trade, business, profession, or occupation carried on in this state;

1348 (b) [~~deductions~~] a deduction with respect to a capital [~~losses~~] loss, net long-term capital
1349 [~~gains~~] gain, [~~and~~] or net operating [~~losses~~] loss shall be based solely on income, gain, loss, and
1350 deduction connected with Utah sources, under rules prescribed by the commission in
1351 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, but otherwise
1352 shall be determined in the same manner as the corresponding federal deductions;

1353 (c) [~~salaries, wages, commissions, and~~] a salary, wage, commission, or compensation
1354 for personal services rendered outside this state [~~shall~~] may not be considered to be derived
1355 from Utah sources;

1356 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and
1357 deduction derived from or connected with Utah sources shall be determined under Section
1358 59-10-118;

1359 (e) a nonresident, other than a dealer holding property primarily for sale to customers
1360 in the ordinary course of the dealer's trade or business, may not be considered to carry on a

1361 trade, business, profession, or occupation in this state solely by reason of the purchase or sale
 1362 of property for the nonresident's own account;

1363 (f) if a trade, business, profession, or occupation is carried on partly within and partly
 1364 without this state, ~~[items]~~ an item of income, gain, loss, ~~[and deductions]~~ or a deduction
 1365 derived from or connected with Utah sources shall be determined in accordance with ~~[the~~
 1366 ~~provisions of]~~ Section 59-10-118;

1367 (g) a nonresident partner's distributive share of partnership income, gain, loss, and
 1368 deduction derived from or connected with Utah sources shall be determined under Section
 1369 ~~[59-10-303]~~ 59-10-1405;

1370 (h) the share of a nonresident estate or trust ~~[and nonresident beneficiaries]~~ or a
 1371 nonresident beneficiary of any estate or trust in income, gain, loss, ~~[and]~~ or deduction derived
 1372 from or connected with Utah sources shall be determined under Section 59-10-207; and

1373 (i) any dividend, interest, or distributive share of income, gain, or loss from a real
 1374 estate investment trust, as defined in Section 59-7-116.5, distributed or allocated to a
 1375 nonresident investor in the trust, including any shareholder, beneficiary, or owner of a
 1376 beneficial interest in the trust, shall be income from intangible personal property under
 1377 Subsection (2)(a), and shall constitute income derived from Utah sources only to the extent the
 1378 nonresident investor is employing its beneficial interest in the trust in a trade, business,
 1379 profession, or occupation carried on by the investor in this state.

1380 Section 24. Section **59-10-118** is amended to read:

1381 **59-10-118. Division of income for tax purposes.**

1382 (1) As used in this section ~~[unless the context otherwise requires]:~~

1383 (a) "Business income" means income arising from transactions and activity in the
 1384 regular course of ~~[the]~~ a taxpayer's trade or business and includes income from tangible and
 1385 intangible property if the acquisition, management, and disposition of the property constitutes
 1386 integral parts of the taxpayer's regular trade or business operations.

1387 (b) "Commercial domicile" means the principal place from which the trade or business
 1388 of ~~[the]~~ a taxpayer is directed or managed.

1389 ~~[(c) "Compensation" means wages, salaries, commissions, and any other form of~~
 1390 ~~remuneration paid to employee for personal services.]~~

1391 ~~[(d)]~~ (c) "Nonbusiness income" means all income other than business income.

1392 [~~(e)~~] (d) "Sales" means all gross receipts of [~~the~~] a taxpayer not allocated under
1393 Subsections (3) through (7).

1394 [~~(f)~~] (e) "State" means any state of the United States, the District of Columbia, the
1395 commonwealth of Puerto Rico, [~~and~~] or any possession of the United States.

1396 (2) [~~Any~~] A taxpayer having business income [~~which~~] that is taxable both within and
1397 without this state, shall allocate and apportion [~~his~~] the taxpayer's net income as provided in
1398 this section.

1399 (3) Rents and royalties from real or tangible personal property, capital gains, interest,
1400 dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness
1401 income, shall be allocated as provided in Subsections (4) through (7).

1402 (4) (a) Net rents and royalties from real property located in this state are allocable to
1403 this state.

1404 (b) Net rents and royalties from tangible personal property are allocable to this state:

1405 (i) if and to the extent that the property is utilized in this state; or

1406 (ii) in their entirety if the taxpayer's commercial domicile is in this state and the
1407 taxpayer is not organized under the laws of or taxable in the state in which the property is
1408 utilized.

1409 (c) The extent of utilization of tangible personal property in a state is determined by
1410 multiplying the rents and royalties by a fraction, the numerator of which is the number of days
1411 of physical location of the property in the state during the rental or royalty period in the taxable
1412 year and the denominator of which is the number of days of physical location of the property
1413 everywhere during all rental or royalty periods in the taxable year. If the physical location of
1414 the property during the rental or royalty period is unknown or unascertainable by the taxpayer,
1415 tangible personal property is utilized in the state in which the property was located at the time
1416 the rental or royalty payer obtained possession.

1417 (5) (a) Capital gains and losses from sales of real property located in this state are
1418 allocable to this state.

1419 (b) Capital gains and losses from sales of tangible personal property are allocable to
1420 this state if:

1421 (i) the property [~~had~~] has a situs in this state at the time of the sale; or

1422 (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in

1423 the state in which the property had a situs.

1424 (c) Capital gains and losses from sales of intangible personal property are allocable to
1425 this state if the taxpayer's commercial domicile is in this state.

1426 (6) Interest and dividends are allocable to this state if the taxpayer's commercial
1427 domicile is in this state.

1428 (7) (a) Patent and copyright royalties are allocable to this state:

1429 (i) if and to the extent that the patent or copyright is utilized by the payer in this state;

1430 or

1431 (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in
1432 which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

1433 (b) A patent is utilized in a state to the extent that it is employed in production,
1434 fabrication, manufacturing, or other processing in the state or to the extent that a patented
1435 product is produced in the state. If the basis of receipts from patent royalties does not permit
1436 allocation to states or if the accounting procedures do not reflect states of utilization, the patent
1437 is utilized in the state in which the taxpayer's commercial domicile is located.

1438 (8) All business income shall be apportioned to this state ~~[by multiplying the income~~
1439 ~~by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales~~
1440 ~~factor, and the denominator of which is three]~~ using the same methods, procedures, and
1441 requirements of Sections 59-7-311 through 59-7-320.

1442 ~~[(9) The property factor is a fraction, the numerator of which is the average value of the~~
1443 ~~taxpayer's real and tangible personal property owned or rented and used in this state during the~~
1444 ~~tax period and the denominator of which is the average value of all the taxpayer's real and~~
1445 ~~tangible personal property owned or rented and used during the tax period.]~~

1446 ~~[(10) Property owned by the taxpayer is valued at its original cost. Property rented by~~
1447 ~~the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the~~
1448 ~~annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from~~
1449 ~~subrentals.]~~

1450 ~~[(11) The average value of property shall be determined by averaging the values at the~~
1451 ~~beginning and ending of the tax period but the commission may require the averaging of~~
1452 ~~monthly values during the tax period, if reasonably required to reflect properly the average~~
1453 ~~value of the taxpayer's property.]~~

1454 ~~[(12) The payroll factor is a fraction, the numerator of which is the total amount paid in~~
1455 ~~this state during the tax period by the taxpayer for compensation, and the denominator of which~~
1456 ~~is the total compensation paid everywhere during the tax period.]~~

1457 ~~[(13) Compensation is paid in this state if:]~~

1458 ~~[(a) the individual's service is performed entirely within the state; or]~~

1459 ~~[(b) the individual's service is performed both within and without the state, but the~~
1460 ~~service performed without the state is incidental to the individual's service within the state; or]~~

1461 ~~[(c) some of the service is performed in the state and:]~~

1462 ~~[(i) the base of operations or, if there is no base of operations, the place from which the~~
1463 ~~service is directed or controlled is in the state; or]~~

1464 ~~[(ii) the base of operations or the place from which the service is directed or controlled~~
1465 ~~is not in any state in which some part of the service is performed, but the individual's residence~~
1466 ~~is in this state.]~~

1467 ~~[(14) The sales factor is a fraction, the numerator of which is the total sales of the~~
1468 ~~taxpayer in this state during the tax period, and the denominator of which is the total sales of~~
1469 ~~the taxpayer everywhere during the tax period.]~~

1470 ~~[(15) Sales of tangible personal property are in this state if the property is delivered or~~
1471 ~~shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of the~~
1472 ~~sale.]~~

1473 ~~[(16) Sales, other than sales of tangible personal property, are in this state if:]~~

1474 ~~[(a) the income-producing activity is performed in this state; or]~~

1475 ~~[(b) the income-producing activity is performed both in and outside this state and a~~
1476 ~~greater proportion of the income-producing activity is performed in this state than in any other~~
1477 ~~state, based on costs of performance.]~~

1478 ~~[(17) If the allocation and apportionment provisions of this chapter do not fairly~~
1479 ~~represent the extent of the taxpayer's business activity in this state, the taxpayer may petition~~
1480 ~~for or the commission may require, in respect of all or any part of the taxpayer's business~~
1481 ~~activity, if reasonable:]~~

1482 ~~[(a) separate accounting;]~~

1483 ~~[(b) the exclusion of any one or more of the factors;]~~

1484 ~~[(c) the inclusion of one or more additional factors which will fairly represent the~~

1485 taxpayer's business activity in this state; or]

1486 [~~(d) the employment of any other method to effectuate an equitable allocation and~~
1487 ~~apportionment of the taxpayer's income.~~]

1488 Section 25. Section **59-10-119** is amended to read:

1489 **59-10-119. Returns by husband and wife, either or both of whom is a**
1490 **nonresident.**

1491 (1) If the [~~federal taxable~~] adjusted gross income of a husband and wife [~~(f) who are~~
1492 both nonresidents of this state~~] is reported or determined on separate federal individual~~
1493 income tax returns, [~~their~~] the husband's and wife's state taxable incomes in this state shall be
1494 separately determined.

1495 (2) If the [~~federal taxable~~] adjusted gross income of a husband and wife [~~(f) who are~~
1496 both nonresidents~~] of this state~~ is reported or determined on a joint federal individual income
1497 tax return [~~their~~], the husband's and wife's tax shall be reported or determined in this state on a
1498 joint return.

1499 (3) (a) If [~~either husband or wife~~] one spouse is a nonresident of this state and the other
1500 spouse is a resident of this state, separate taxes shall be determined on [~~their~~] each spouse's
1501 separate state taxable incomes on [~~such forms as the commission shall prescribe, unless both~~
1502 ~~elect to determine their state taxable income as if both were residents~~] forms prescribed by the
1503 commission.

1504 (b) Notwithstanding Subsection (3)(a), a husband and wife may elect to be considered
1505 to be residents of this state for purposes of determining state taxable income for a taxable year.

1506 (c) If [~~a husband and wife (one being a resident, the other a nonresident)~~] one spouse
1507 who is a nonresident of this state and the other spouse who is a resident of this state file a joint
1508 federal income tax return, but determine [~~their~~] state taxable income separately, [~~they~~] the
1509 spouses shall compute their taxable incomes in this state as if their [~~federal taxable~~] adjusted
1510 gross incomes had been determined separately.

1511 Section 26. Section **59-10-120** is amended to read:

1512 **59-10-120. Change of status as resident or nonresident.**

1513 (1) If an individual changes [~~his~~] the individual's status during [~~his~~] the taxable year
1514 from resident to nonresident or from nonresident to resident, the commission may by rule,
1515 made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, require

1516 ~~[him]~~ the individual to file one return for the portion of the taxable year during which ~~[he]~~ the
 1517 individual is a resident and another return for the portion of the taxable year during which ~~[he]~~
 1518 the individual is a nonresident.

1519 (2) ~~[Except as provided in Subsection (3) the]~~ The taxable income of the individual
 1520 described in Subsection (1) shall be determined as provided in this chapter for residents and for
 1521 nonresidents as if the individual's taxable year for federal income tax purposes were limited to
 1522 the period of ~~[his]~~ the individual's resident and nonresident status respectively.

1523 ~~[(3) There shall be included in determining taxable income from sources within or~~
 1524 ~~without this state, as the case may be, income, gain, loss, or deduction accrued prior to the~~
 1525 ~~change of status, even though not otherwise includable or allowable in respect of the period~~
 1526 ~~prior to such change, but the taxation or deduction of items received or accrued prior to the~~
 1527 ~~change of status shall not be affected by the change.]~~

1528 Section 27. Section **59-10-121** is amended to read:

1529 **59-10-121. Proration when two returns required.**

1530 ~~[Where two returns are required to be filed as provided in Section 59-10-120:]~~

1531 ~~[(1) personal exemptions and the standard deduction as used on the federal return shall~~
 1532 ~~be prorated between the two returns, under rules prescribed by the commission, to reflect the~~
 1533 ~~proportions of the taxable year during which the individual was a resident and a nonresident;~~
 1534 ~~and]~~

1535 ~~[(2)]~~ If, for purposes of Section 59-10-120, an individual is required to file two returns
 1536 for a taxable year, the total amount of the taxes due ~~[thereon shall]~~ on the two returns may not
 1537 be less than the total amount of the taxes that would be due if the total of the taxable incomes
 1538 reported on the two returns ~~[were includable]~~ had been included in one return.

1539 Section 28. Section **59-10-122** is amended to read:

1540 **59-10-122. Taxable year.**

1541 (1) For purposes of ~~[the]~~ a tax imposed by this chapter, ~~[a taxpayer's]~~ the taxable year
 1542 of a resident or nonresident individual or resident or nonresident estate or trust shall be the
 1543 same as ~~[his]~~ the taxable year of the resident or nonresident individual or resident or
 1544 nonresident estate or trust for federal income tax purposes.

1545 (2) (a) If ~~[a taxpayer's]~~ the taxable year of a resident or nonresident individual or
 1546 resident or nonresident estate or trust is changed for federal income tax purposes, ~~[his]~~ that

1547 taxable year for purposes of ~~[the]~~ a tax imposed by this chapter shall be ~~[similarly]~~ changed in
 1548 the same manner as the change for federal income tax purposes.

1549 (b) If a change in a taxable year results in a taxable period of less than 12 months for
 1550 federal income tax purposes, ~~[the]~~ that same taxable period shall be used in computing ~~[the]~~ a
 1551 tax imposed by this chapter.

1552 Section 29. Section **59-10-123** is amended to read:

1553 **59-10-123. Accounting method.**

1554 (1) For purposes of ~~[the]~~ a tax imposed by this chapter, a ~~[taxpayer's]~~ resident or
 1555 nonresident individual's or resident or nonresident estate's or trust's method of accounting shall
 1556 be the same as the method ~~[employed]~~ of accounting the resident or nonresident individual or
 1557 resident or nonresident estate or trust uses for federal income tax purposes.

1558 (2) If a ~~[taxpayer's]~~ resident or nonresident individual's or resident or nonresident
 1559 estate's or trust's method of accounting is changed for federal income tax purposes, ~~[his]~~ the
 1560 resident or nonresident individual's or resident or nonresident estate's or trust's method of
 1561 accounting shall be ~~[similarly]~~ changed ~~[and reflected in each return filed for Utah individual~~
 1562 ~~income tax purposes]~~ in the same manner:

1563 (a) for purposes of a tax imposed by this chapter; and

1564 (b) for any taxable year for which [such] the change in the method of accounting is
 1565 [reflected in his return] made for federal income tax purposes.

1566 Section 30. Section **59-10-124** is amended to read:

1567 **59-10-124. Adjustments between taxable years after change in accounting**
 1568 **method.**

1569 (1) In computing ~~[a taxpayer's]~~ a resident or nonresident individual's or resident or
 1570 nonresident estate's or trust's state taxable income for ~~[any]~~ a taxable year under a method of
 1571 accounting different from the method under which the ~~[taxpayer's]~~ resident or nonresident
 1572 individual's or resident or nonresident estate's or trust's state taxable income ~~[for the previous~~
 1573 ~~year] was computed[, there shall be taken into account those adjustments which are~~
 1574 ~~determined, under rules prescribed by the commission, to be necessary solely by reason of the~~
 1575 ~~change, to prevent double inclusion or exclusion of an item of gross income, or double~~
 1576 ~~allowance or disallowance of an item of deduction or credit.] for the previous taxable year,~~
 1577 state taxable income shall be increased or decreased:

1578 (a) to prevent double inclusion or exclusion of an item of gross income as a result of
 1579 the change in the method of accounting; or

1580 (b) to prevent double allowance or disallowance of a subtraction from or addition to
 1581 gross income as a result of the change in the method of accounting.

1582 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 1583 commission may make rules for making an increase or decrease required by Subsection (1).

1584 Section 31. Section **59-10-125** is amended to read:

1585 **59-10-125. Adjustment after change of accounting method.**

1586 (1) If a taxpayer's method of accounting is changed, other than from an accrual to an
 1587 installment method, any additional tax that results from adjustments determined to be necessary
 1588 solely by reason of the change ~~[shall]~~ may not be greater than if ~~[such]~~ those adjustments were
 1589 ratably allocated and included for the taxable year of the change and the preceding taxable
 1590 years, not in excess of two, during which the taxpayer used the method of accounting from
 1591 which the change is made.

1592 (2) If a taxpayer's method of accounting is changed from an accrual to an installment
 1593 method, any additional tax for the taxable year of ~~[such]~~ the change ~~[of]~~ in the method of
 1594 accounting and for any subsequent taxable year that is attributable to the receipt of installment
 1595 payments properly accrued in a prior taxable year, shall be reduced by the portion of tax for any
 1596 prior taxable year attributable to the accrual of such installment payments, under rules
 1597 prescribed by the commission in accordance with Title 63, Chapter 46a, Utah Administrative
 1598 Rulemaking Act.

1599 Section 32. Section **59-10-126** is amended to read:

1600 **59-10-126. Business entities not subject to tax -- Exceptions.**

1601 ~~(1) [An association, trust, or other unincorporated organization]~~ A business entity that
 1602 is taxable as a corporation for federal income tax purposes ~~[shall]~~:

1603 (a) may not be subject to the tax imposed by this chapter~~[-, but shall be]; and~~

1604 (b) is subject to ~~[the provisions of Title 59,]~~ Chapter 7, Corporate Franchise and
 1605 Income Taxes.

1606 ~~[(2) To the extent an association, trust, or other unincorporated organization which by~~
 1607 ~~reason of its purposes or activities is exempt from federal income tax, it shall be exempt from~~
 1608 ~~the tax imposed by this chapter, but to the extent that such an otherwise exempt organization~~

1609 ~~has, or is treated as having, income subject to tax for federal tax purposes, it shall be subject to~~
 1610 ~~the provisions of Title 59, Chapter 7.]~~

1611 (2) A business entity that is exempt from federal income taxation is exempt from the
 1612 tax imposed by this chapter.

1613 (3) Notwithstanding Subsection (2), if a business entity that is exempt from federal
 1614 income taxation has income that is subject to federal income taxation, that income is subject to
 1615 taxation under Chapter 7, Corporate Franchise and Income Taxes.

1616 Section 33. Section **59-10-201** is amended to read:

1617 **59-10-201. Taxation of resident trusts and estates.**

1618 (1) ~~[A]~~ Except as provided in Subsection (2), a tax determined in accordance with the
 1619 [rates] rate prescribed by [Section 59-10-104 for individuals filing separately] Subsection
 1620 59-10-104(2)(b) is imposed for each taxable year on the state taxable income of each resident
 1621 estate or trust[, except for trusts].

1622 (2) The following are not subject to a tax imposed by this part:

1623 (a) a resident estate or trust that is not required to file a federal income tax return for
 1624 estates and trusts for the taxable year; or

1625 (b) a resident trust taxed as [corporations] a corporation.

1626 ~~[(2)]~~ (3) A resident estate or trust shall be allowed the credit provided in Section
 1627 59-10-1003, relating to an income tax imposed by another state, except that the limitation shall
 1628 be computed by reference to the taxable income of the estate or trust.

1629 ~~[(3)]~~ (4) The property of the Utah Educational Savings Plan trust established in Title
 1630 53B, Chapter 8a, Higher Education Savings Incentive Program, and its income from operations
 1631 and investments are exempt from all taxation by the state under this chapter.

1632 Section 34. Section **59-10-201.1** is amended to read:

1633 **59-10-201.1. State taxable income of a resident estate or trust defined.**

1634 ~~[The]~~ For a taxable year, the state taxable income of a resident estate or trust means [its
 1635 federal taxable] the unadjusted income [as calculated in Section 641 (a) and (b), Internal
 1636 Revenue Code] of the resident estate or trust for that taxable year, as adjusted by Sections
 1637 59-10-202, 59-10-209.1, and 59-10-210.

1638 Section 35. Section **59-10-202** is amended to read:

1639 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**

1640 **nonresident estate or trust.**

1641 (1) There shall be added to ~~[-federal taxable]~~ unadjusted income of a resident or
1642 nonresident estate or trust:

1643 ~~[(a) the amount of any income tax imposed by this or any predecessor Utah individual~~
1644 ~~income tax law and the amount of any income tax imposed by the laws of another state, the~~
1645 ~~District of Columbia, or a possession of the United States, to the extent deducted from federal~~
1646 ~~adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal~~
1647 ~~taxable income;]~~

1648 ~~[(b)]~~ (a) a lump sum distribution allowable as a deduction under Section 402(d)(3) ~~[of~~
1649 ~~the]~~, Internal Revenue Code, to the extent deductible under Section 62(a)(8) ~~[of the]~~, Internal
1650 Revenue Code, in determining adjusted gross income;

1651 ~~[(c)]~~ (b) except as provided in Subsection (3), ~~[for taxable years beginning on or after~~
1652 ~~January 1, 2003;]~~ for bonds, notes, and other evidences of indebtedness acquired on or after
1653 January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by
1654 one or more of the following entities:

1655 (i) a state other than this state;

1656 (ii) the District of Columbia;

1657 (iii) a political subdivision of a state other than this state; or

1658 (iv) an agency or instrumentality of an entity described in Subsections (1)~~[(c)]~~(b)(i)
1659 through (iii);

1660 ~~[(d)]~~ (c) any portion of federal taxable income for a taxable year if that federal taxable
1661 income is derived from stock:

1662 (i) in an S corporation; and

1663 (ii) that is held by an electing small business trust;

1664 ~~[(e)-(i)]~~ (d) the amount withdrawn under Title 53B, Chapter 8a, Higher Education
1665 Savings Incentive Program, from the account of a resident or nonresident estate or trust that is
1666 an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount
1667 is withdrawn, if that amount withdrawn from the account of the resident or nonresident estate
1668 or trust that is the account owner:

1669 ~~[(A)]~~ (i) is not expended for higher education costs as defined in Section 53B-8a-102;

1670 and

1671 ~~[(B)] (ii) is:~~

1672 ~~(A) subtracted by the resident or nonresident estate or trust:~~

1673 ~~(I) that is the account owner; and~~

1674 ~~[(H) in accordance with Subsection (2)(j)(i); and]~~

1675 ~~[(ii) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings~~

1676 ~~Incentive Program, from the account of a resident or nonresident estate or trust that is an~~

1677 ~~account owner as defined in Section 53B-8a-102, for the taxable year beginning on or after~~

1678 ~~January 1, 2007, but beginning on or before December 31, 2007, if that amount withdrawn~~

1679 ~~from the account of the resident or nonresident estate or trust that is the account owner;]~~

1680 ~~[(A) is not expended for higher education costs as defined in Section 53B-8a-102; and]~~

1681 ~~[(B) is subtracted by the resident or nonresident estate or trust:]~~

1682 ~~[(F) that is the account owner; and]~~

1683 ~~[(H) in accordance with Subsection (2)(j)(ii); and]~~

1684 ~~(II) on the resident or nonresident estate's or trust's return filed under this chapter for a~~

1685 ~~taxable year beginning on or before December 31, 2007; or~~

1686 ~~(B) used as the basis for the resident or nonresident estate or trust that is the account~~

1687 ~~owner to claim a tax credit under Section 59-10-1017; and~~

1688 ~~[(f)] (e) any fiduciary adjustments required by Section 59-10-210.~~

1689 (2) There shall be subtracted from ~~[federal taxable]~~ unadjusted income of a resident or

1690 nonresident estate or trust:

1691 (a) the interest or a dividend on obligations or securities of the United States and its

1692 possessions or of any authority, commission, or instrumentality of the United States, to the

1693 extent that interest or dividend is included in gross income for federal income tax purposes for

1694 the taxable year but exempt from state income taxes under the laws of the United States, but

1695 the amount subtracted under this Subsection (2) shall be reduced by any interest on

1696 indebtedness incurred or continued to purchase or carry the obligations or securities described

1697 in this Subsection (2), and by any expenses incurred in the production of interest or dividend

1698 income described in this Subsection (2) to the extent that such expenses, including amortizable

1699 bond premiums, are deductible in determining federal taxable income;

1700 ~~[(b) 1/2 of the net amount of any income tax paid or payable to the United States after~~

1701 ~~all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the~~

1702 ~~same taxable year;]~~

1703 ~~[(e)]~~ (b) income of an irrevocable resident trust if:

1704 (i) the income would not be treated as state taxable income derived from Utah sources

1705 under Section 59-10-204 if received by a nonresident trust;

1706 (ii) the trust first became a resident trust on or after January 1, 2004;

1707 (iii) no assets of the trust were held, at any time after January 1, 2003, in another

1708 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

1709 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

1710 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the

1711 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,

1712 Subchapter J, Subpart E of the Internal Revenue Code; and

1713 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on

1714 indebtedness incurred or continued to purchase or carry the assets generating the income

1715 described in this Subsection (2)(b), and by any expenses incurred in the production of income

1716 described in this Subsection (2)(b), to the extent that those expenses, including amortizable

1717 bond premiums, are deductible in determining federal taxable income;

1718 ~~[(d)]~~ (c) if the conditions of Subsection (4)(a) are met, the amount of income of a

1719 resident or nonresident estate or trust derived from a deceased Ute tribal member:

1720 (i) during a time period that the Ute tribal member resided on homesteaded land

1721 diminished from the Uintah and Ouray Reservation; and

1722 (ii) from a source within the Uintah and Ouray Reservation;

1723 ~~[(e)(i) for taxable years beginning on or after January 1, 2003, the total amount of a~~

1724 ~~resident or nonresident estate's or trust's short-term capital gain or long-term capital gain on a~~

1725 ~~capital gain transaction:]~~

1726 ~~[(A) that occurs on or after January 1, 2003;]~~

1727 ~~[(B) if 70% or more of the gross proceeds of the capital gain transaction are expended:]~~

1728 ~~[(D) to purchase qualifying stock in a Utah small business corporation; and]~~

1729 ~~[(H) within a 12-month period after the day on which the capital gain transaction~~

1730 ~~occurs; and]~~

1731 ~~[(C) if, prior to the purchase of the qualifying stock described in Subsection~~

1732 ~~(2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in~~

1733 ~~the Utah small business corporation that issued the qualifying stock; and]~~
1734 ~~[(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
1735 ~~the commission may make rules:]~~
1736 ~~[(A) defining the term "gross proceeds"; and]~~
1737 ~~[(B) for purposes of Subsection (2)(c)(i)(C), prescribing the circumstances under which~~
1738 ~~a resident or nonresident estate or trust has an ownership interest in a Utah small business~~
1739 ~~corporation;]~~
1740 ~~[(f) for the taxable year beginning on or after January 1, 2005, but beginning on or~~
1741 ~~before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or~~
1742 ~~trust that is derived from a deceased qualifying military servicemember:]~~
1743 ~~[(i) for service:]~~
1744 ~~[(A) as a qualifying military servicemember; or]~~
1745 ~~[(B) under an order into active service in accordance with Section 39-1-5; and]~~
1746 ~~[(ii) to the extent that income is included in total income on that resident or nonresident~~
1747 ~~estate's or trust's federal income tax return for estates and trusts for that taxable year;]~~
1748 ~~[(g)] (d) any amount:~~
1749 ~~(i) received by a resident or nonresident estate or trust;~~
1750 ~~(ii) that constitutes a refund of taxes imposed by:~~
1751 ~~(A) a state; or~~
1752 ~~(B) the District of Columbia; and~~
1753 ~~(iii) to the extent that amount is included in total income on that resident or nonresident~~
1754 ~~estate's or trust's federal tax return for estates and trusts for that taxable year;~~
1755 ~~[(h)] (e) the amount of a railroad retirement benefit:~~
1756 ~~(i) paid:~~
1757 ~~(A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et~~
1758 ~~seq.;~~
1759 ~~(B) to a resident or nonresident estate or trust derived from a deceased resident or~~
1760 ~~nonresident individual; and~~
1761 ~~(C) for the taxable year; and~~
1762 ~~(ii) to the extent that railroad retirement benefit is included in total income on that~~
1763 ~~resident or nonresident estate's or trust's federal tax return for estates and trusts;~~

1764 ~~[(i)]~~ (f) an amount:

1765 (i) received by a resident or nonresident estate or trust if that amount is derived from a

1766 deceased enrolled member of an American Indian tribe; and

1767 (ii) to the extent that the state is not authorized or permitted to impose a tax under this

1768 part on that amount in accordance with:

1769 (A) federal law;

1770 (B) a treaty; or

1771 (C) a final decision issued by a court of competent jurisdiction;

1772 ~~[(j) (i) subject to Subsection (1)(e)(i), for taxable years beginning on or after January 1,~~

1773 ~~2007, the amount of a qualified investment as defined in Section 53B-8a-102 that:]~~

1774 ~~[(A) a resident or nonresident estate or trust that is an account owner as defined in~~

1775 ~~Section 53B-8a-102 makes during the taxable year;]~~

1776 ~~[(B) the resident or nonresident estate or trust described in Subsection (2)(j)(i)(A) does~~

1777 ~~not deduct on a federal tax return for estates and trusts; and]~~

1778 ~~[(C) does not exceed the maximum amount of the qualified investment that may be~~

1779 ~~subtracted from federal taxable income for a taxable year in accordance with Subsections~~

1780 ~~53B-8a-106(1)(e) and (f); and]~~

1781 ~~[(ii) subject to Subsection (1)(e)(ii), for the taxable year beginning on or after January~~

1782 ~~1, 2007, but beginning on or before December 31, 2007 only, and in addition to any subtraction~~

1783 ~~a resident or nonresident estate or trust that is an account owner as defined in Section~~

1784 ~~53B-8a-102 makes in accordance with Subsection (2)(j)(i), the amount of a qualified~~

1785 ~~investment as defined in Section 53B-8a-102 that:]~~

1786 ~~[(A) a resident or nonresident estate or trust that is an account owner as defined in~~

1787 ~~Section 53B-8a-102 could have subtracted under Subsection (2)(j)(i) for the taxable year~~

1788 ~~beginning on or after January 1, 2006, but beginning on or before December 31, 2006, had the~~

1789 ~~subtraction under Subsection (2)(j)(i) been in effect for the taxable year beginning on or after~~

1790 ~~January 1, 2006, but beginning on or before December 31, 2006;]~~

1791 ~~[(B) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A)~~

1792 ~~makes during the taxable year beginning on or after January 1, 2006, but beginning on or~~

1793 ~~before December 31, 2006;]~~

1794 ~~[(C) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A) does~~

1795 not deduct on a federal tax return for estates and trusts; and]

1796 [~~(D)~~ does not exceed the maximum amount of the qualified investment that may be

1797 subtracted from federal taxable income:]

1798 [~~(F)~~ for the taxable year beginning on or after January 1, 2006, but beginning on or

1799 before December 31, 2006; and]

1800 [~~(H)~~ in accordance with Subsections 53B-8a-106(1)(e) and (f); and]

1801 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section

1802 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the

1803 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for

1804 the taxable year; and

1805 [~~(k)~~] (h) any fiduciary adjustments required by Section 59-10-210.

1806 (3) Notwithstanding Subsection (1)[~~(c)~~](b), interest from bonds, notes, and other

1807 evidences of indebtedness issued by an entity described in Subsections (1)[~~(c)~~](b)(i) through

1808 (iv) may not be added to [~~federal taxable~~] unadjusted income of a resident or nonresident estate

1809 or trust if, as annually determined by the commission:

1810 (a) for an entity described in Subsection (1)[~~(c)~~](b)(i) or (ii), the entity and all of the

1811 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on

1812 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

1813 (b) for an entity described in Subsection (1)[~~(c)~~](b)(iii) or (iv), the following do not

1814 impose a tax based on income on any part of the bonds, notes, and other evidences of

1815 indebtedness of this state:

1816 (i) the entity; or

1817 (ii) (A) the state in which the entity is located; or

1818 (B) the District of Columbia, if the entity is located within the District of Columbia.

1819 (4) (a) A subtraction for an amount described in Subsection (2)[~~(d)~~](c) is allowed only

1820 if:

1821 (i) the income is derived from a deceased Ute tribal member; and

1822 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the

1823 requirements of this Subsection (4).

1824 (b) The agreement described in Subsection (4)(a):

1825 (i) may not:

1826 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

1827 (B) provide a subtraction under this section greater than or different from the

1828 subtraction described in Subsection (2)~~(c)~~(c); or

1829 (C) affect the power of the state to establish rates of taxation; and

1830 (ii) shall:

1831 (A) provide for the implementation of the subtraction described in Subsection

1832 ~~(2)(c)~~(c);

1833 (B) be in writing;

1834 (C) be signed by:

1835 (I) the governor; and

1836 (II) the chair of the Business Committee of the Ute tribe;

1837 (D) be conditioned on obtaining any approval required by federal law; and

1838 (E) state the effective date of the agreement.

1839 (c) (i) The governor shall report to the commission by no later than February 1 of each

1840 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is

1841 in effect.

1842 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the

1843 subtraction permitted under Subsection ~~(2)(c)~~(c) is not allowed for taxable years beginning

1844 on or after the January 1 following the termination of the agreement.

1845 (d) For purposes of Subsection ~~(2)(c)~~(c) and in accordance with Title 63, Chapter

1846 46a, Utah Administrative Rulemaking Act, the commission may make rules:

1847 (i) for determining whether income is derived from a source within the Uintah and

1848 Ouray Reservation; and

1849 (ii) that are substantially similar to how adjusted gross income derived from Utah

1850 sources is determined under Section 59-10-117.

1851 Section 36. Section **59-10-204** is amended to read:

1852 **59-10-204. State taxable income of a nonresident estate or trust.**

1853 ~~[The]~~ For a taxable year, the state taxable income of a nonresident estate or trust ~~[shall~~

1854 ~~be its state taxable]~~ is an amount calculated by:

1855 (1) determining the unadjusted income ~~[as calculated in Section 59-10-201.1;]~~ of the

1856 nonresident estate or trust for that taxable year after making the adjustments required by:

1857 (a) Section 59-10-202;
 1858 (b) Section 59-10-207;
 1859 (c) Section 59-10-209.1; or
 1860 (d) Section 59-10-210; and
 1861 (2) calculating the portion of the amount determined under Subsection (1) that is
 1862 derived from Utah sources determined in accordance with the principles of Section 59-10-117[;
 1863 and adjusted as provided in Section 59-10-207].

1864 Section 37. Section **59-10-205** is amended to read:

1865 **59-10-205. Tax on income derived from Utah sources.**

1866 ~~[A tax]~~ (1) Except as provided in Subsection (2), a tax is imposed on a nonresidential
 1867 estate or trust in an amount equal to the product of:

1868 (a) the nonresident estate's or trust's state taxable income[; as calculated in Section
 1869 59-10-204, of every nonresident estate or trust in accordance with the rates prescribed in
 1870 Section 59-10-104 for individuals filing separately. The tax shall only be applied to income
 1871 derived from Utah sources as adjusted by Section 59-10-207, including such items from
 1872 another estate or trust of which the first estate or trust is a beneficiary.] as determined under
 1873 Section 59-10-204; and

1874 (b) the percentage listed in Subsection 59-10-104(2).

1875 (2) The following are not subject to a tax imposed by this part:

1876 (a) a nonresident estate or trust that is not required to file a federal income tax return
 1877 for estates and trusts for the taxable year; or

1878 (b) a nonresident trust taxed as a corporation.

1879 Section 38. Section **59-10-207** is amended to read:

1880 **59-10-207. Share of a nonresident estate or trust and beneficiaries in state taxable**
 1881 **income.**

1882 (1) The following shall be determined as provided in this section:

1883 ~~[(1) The]~~ (a) the share of a nonresident estate or trust [and its beneficiaries in items] or
 1884 a nonresident beneficiary of a nonresident estate or trust in an item of income, gain, loss, [and]
 1885 or deduction [entering into the definition of] that constitutes distributable net income; and [the
 1886 share]

1887 (b) for purposes of Section 59-10-116, the share of a nonresident beneficiary of any

1888 estate or trust in estate or trust income, gain, loss, ~~[and]~~ or deduction ~~[shall be determined as~~
 1889 ~~follows:]~~.

1890 ~~(2)~~ (a) ~~[To]~~ The modifications described in Sections 59-10-202 and 59-10-210 shall be
 1891 added to or subtracted from the amount of ~~[items]~~ an item of income, gain, loss, ~~[and]~~ or
 1892 deduction that ~~[enter into the definition of]~~ constitutes distributable net income ~~[there shall be~~
 1893 ~~added or subtracted, as the case may be, the modifications described in Sections 59-10-202 and~~
 1894 ~~59-10-210]~~ to the extent ~~[they relate to items]~~ the item relates to an item of income, gain, loss,
 1895 ~~[and]~~ or deduction that also ~~[enter into the definition of]~~ constitutes distributable net income.
 1896 ~~[No]~~

1897 (b) A modification ~~[shall]~~ may not be made under this section ~~[that has the effect of~~
 1898 ~~duplicating]~~ if the modification duplicates an item already reflected in ~~[the definition of]~~
 1899 distributable net income.

1900 ~~[(b)]~~ (3) (a) The amount determined under Subsection ~~[(1)]~~ (2)(a) shall be allocated
 1901 among the estate or trust and ~~[its]~~ the beneficiaries ~~[(including solely for the purpose of this~~
 1902 ~~allocation, resident beneficiaries)]~~ of the estate or trust, including a resident beneficiary, in
 1903 proportion to ~~[their respective shares of federal]~~ the estate's, trust's, or beneficiary's share of
 1904 distributable net income. ~~[The amounts so allocated shall have]~~

1905 (b) An amount allocated in accordance with Subsection (3)(a) has the same character
 1906 as for federal income tax purposes.

1907 ~~[(c)]~~ (4) (a) If ~~[the]~~ an estate or trust ~~[has no federal]~~ does not have distributable net
 1908 income for the taxable year, the share of each beneficiary in the ~~[net]~~ amount determined under
 1909 Subsection ~~[(1)]~~ (2)(a) shall be in proportion to ~~[his]~~ the beneficiary's share of the estate or trust
 1910 income for ~~[such]~~ that taxable year, under state law or the terms of the governing instrument,
 1911 that is required to be distributed currently and any other amounts of ~~[such]~~ that income
 1912 distributed in ~~[such]~~ that taxable year. ~~[Any]~~

1913 (b) For purposes of this Subsection (4), any balance of ~~[such]~~ net income shall be
 1914 allocated to the estate or trust.

1915 ~~[(2) The]~~ (5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative
 1916 Rulemaking Act, the commission may by rule establish ~~[such]~~ one or more other ~~[method or]~~
 1917 methods of determining the ~~[respective]~~ shares of ~~[the beneficiaries]~~ a beneficiary and of ~~[the]~~
 1918 an estate or trust in ~~[its]~~:

1919 (i) income derived from sources in this state~~;~~ and ~~in the~~
1920 (ii) modifications related ~~[thereto, as may be appropriate and equitable. The]~~ to
1921 income, gain, loss, or deduction.

1922 (b) A fiduciary may elect to use ~~[any other methods prescribed in]~~ a method allowed by
1923 this Subsection (5) only ~~[when]~~ if the allocation of ~~[such respective shares]~~ a share under ~~[this~~
1924 ~~section would result]~~ Subsection (3) or (4):

1925 (i) results in an inequity in the allocation ~~[which]; and~~
1926 (ii) the inequity described in Subsection (5)(b)(i) is substantial ~~[both];~~

1927 (A) in amount; and
1928 (B) in relation to the total amount of the modifications ~~[referred to]~~ described in
1929 Subsection ~~[(+)]~~ (2)(a).

1930 Section 39. Section **59-10-209.1** is amended to read:
1931 **59-10-209.1. Adjustments to unadjusted income.**

1932 (1) The commission shall allow an adjustment to ~~[state taxable]~~ unadjusted income of a
1933 resident or nonresident estate or trust if the resident or nonresident estate or trust would
1934 otherwise:

1935 (a) receive a double tax benefit under this chapter; or
1936 (b) suffer a double tax detriment under this chapter.

1937 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1938 commission may make rules to allow for the adjustment to ~~[state taxable]~~ unadjusted income
1939 required by Subsection (1).

1940 Section 40. Section **59-10-210** is amended to read:
1941 **59-10-210. Fiduciary adjustments.**

1942 (1) A share of the fiduciary adjustments described in Subsection (2) shall be added to
1943 or subtracted from ~~[federal taxable]~~ unadjusted income:

1944 (a) of:
1945 (i) a resident or nonresident estate or trust; or
1946 (ii) a resident or nonresident beneficiary of a resident or nonresident estate or trust; and
1947 (b) as provided in this section.

1948 (2) For purposes of Subsection (1), the fiduciary adjustments are the following
1949 amounts:

1950 (a) the additions to and subtractions from [~~federal taxable~~] unadjusted income of a
1951 resident or nonresident estate or trust required by Section 59-10-202[~~, except for Subsection~~
1952 ~~59-10-202(2)(b)~~]; and

1953 (b) a tax credit claimed by a resident or nonresident estate or trust as allowed by:

1954 (i) Section 59-6-102;

1955 (ii) Part 10, Nonrefundable Tax Credit Act;

1956 (iii) Part 11, Refundable Tax Credit Act;

1957 (iv) Section 59-13-202;

1958 (v) Section 63-38f-413; or

1959 (vi) Section 63-38f-503.

1960 (3) (a) The respective shares of an estate or trust and its beneficiaries, including for the
1961 purpose of this allocation a nonresident beneficiary, in the state fiduciary adjustments, shall be
1962 allocated in proportion to their respective shares of federal distributable net income of the
1963 estate or trust.

1964 (b) If the estate or trust described in Subsection (3)(a) has no federal distributable net
1965 income for the taxable year, the share of each beneficiary in the fiduciary adjustments shall be
1966 allocated in proportion to that beneficiary's share of the estate or trust income for the taxable
1967 year that is, under state law or the governing instrument, required to be distributed currently
1968 plus any other amounts of that income distributed in that taxable year.

1969 (c) After making the allocations required by Subsections (3)(a) and (b), any balance of
1970 the fiduciary adjustments shall be allocated to the estate or trust.

1971 (4) (a) The commission shall allow a fiduciary to use a method for determining the
1972 allocation of the fiduciary adjustments described in Subsection (2) other than the method
1973 described in Subsection (3) if using the method described in Subsection (3) results in an
1974 inequity:

1975 (i) in allocating the fiduciary adjustments described in Subsection (2); and

1976 (ii) if the inequity is substantial:

1977 (A) in amount; and

1978 (B) in relation to the total amount of the fiduciary adjustments described in Subsection
1979 (2).

1980 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1981 commission may make rules authorizing a fiduciary to use a method for determining the
 1982 allocation of the fiduciary adjustments described in Subsection (2) other than the method
 1983 described in Subsection (3) if using the method described in Subsection (3) results in an
 1984 inequity:

- 1985 (i) in allocating the fiduciary adjustments described in Subsection (2); and
- 1986 (ii) if the inequity is substantial:
 - 1987 (A) in amount; and
 - 1988 (B) in relation to the total amount of the fiduciary adjustments described in Subsection
 - 1989 (2).

1990 Section 41. Section **59-10-507** is amended to read:

1991 **59-10-507. Return by a pass-through entity.**

1992 (1) ~~[For purposes of]~~ As used in this section~~[-"taxable"]:~~

1993 (a) "Pass-through entity" is as defined in Section 59-10-1402.

1994 (b) "Taxable year" means a year or other time period that would be a taxable year of a
 1995 [partnership if the partnership] pass-through entity if the pass-through entity were subject to
 1996 taxation under this chapter.

1997 (2) A [partnership] pass-through entity having any income derived from sources in this
 1998 state shall make a return for the taxable year as prescribed by the commission.

1999 (3) For purposes of Subsection (2), a [partnership's] pass-through entity's income
 2000 derived from sources in this state shall be determined in accordance with ~~[Section 59-10-303]~~
 2001 the principles of Section 59-10-1405.

2002 Section 42. Section **59-10-1002.1**, which is renumbered from Section 59-10-1016 is
 2003 renumbered and amended to read:

2004 ~~[59-10-1016].~~ **59-10-1002.1. Removal of tax credit from tax return and**
 2005 **prohibition on claiming or carrying forward a tax credit -- Conditions for removal and**
 2006 **prohibition on claiming or carrying forward a tax credit -- Commission reporting**
 2007 **requirements.**

2008 (1) As used in this section, "tax return" means a tax return filed in accordance with this
 2009 chapter.

2010 (2) Beginning two taxable years after the requirements of Subsection (3) are met:

2011 (a) the commission shall remove a tax credit allowed under this part from each tax

2012 return on which the tax credit appears; and

2013 (b) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
2014 credit.

2015 (3) The commission shall remove a tax credit allowed under this part from a tax return
2016 and a claimant, estate, or trust filing a tax return may not claim or carry forward [a] the tax
2017 credit as provided in Subsection (2) if:

2018 (a) the total amount of the tax credit claimed or carried forward by all claimants,
2019 estates, or trusts filing tax returns is less than \$10,000 per year for three consecutive taxable
2020 years beginning on or after January 1, 2002; and

2021 (b) less than ten claimants, estates, and trusts per year for the three consecutive taxable
2022 years described in Subsection (3)(a), file a tax return claiming or carrying forward the tax
2023 credit.

2024 (4) The commission shall, on or before the November interim meeting of the year after
2025 the taxable year in which the requirements of Subsection (3) are met:

2026 (a) report to the Revenue and Taxation Interim Committee that in accordance with this
2027 section:

2028 (i) the commission is required to remove a tax credit from each tax return on which the
2029 tax credit appears; and

2030 (ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
2031 credit; and

2032 (b) notify each state agency required by statute to assist in the administration of the tax
2033 credit that in accordance with this section:

2034 (i) the commission is required to remove a tax credit from each tax return on which the
2035 tax credit appears; and

2036 (ii) a claimant, estate, or trust filing a tax return may not claim or carry forward the tax
2037 credit.

2038 Section 43. Section **59-10-1002.2**, which is renumbered from Section 59-10-1206.9 is
2039 renumbered and amended to read:

2040 ~~[59-10-1206.9].~~ **59-10-1002.2. Apportionment of tax credits.**

2041 (1) A nonresident individual or a part-year resident individual that claims a tax credit
2042 in accordance with Section [~~59-10-1206.1, 59-10-1206.2, or 59-10-1206.3~~] 59-10-1017,

2043 59-10-1018, 59-10-1019, or 59-10-1021, may only claim an apportioned amount of the tax
 2044 credit equal to:

2045 ~~[(1)]~~ (a) for a nonresident individual, the product of:

2046 ~~[(a)]~~ (i) the state income tax percentage for the nonresident individual; and

2047 ~~[(b)]~~ (ii) the amount of the tax credit that the nonresident individual would have been
 2048 allowed to claim but for the apportionment requirements of this section; or

2049 ~~[(2)]~~ (b) for a part-year resident individual, the product of:

2050 ~~[(a)]~~ (i) the state income tax percentage for the part-year resident individual; and

2051 ~~[(b)]~~ (ii) the amount of the tax credit that the part-year resident individual would have
 2052 been allowed to claim but for the apportionment requirements of this section.

2053 (2) A nonresident estate or trust that claims a tax credit in accordance with Section

2054 59-10-1017 or 59-10-1020 may only claim an apportioned amount of the tax credit equal to the
 2055 product of:

2056 (a) the state income tax percentage for the nonresident estate or trust; and

2057 (b) the amount of the tax credit that the nonresident estate or trust would have been
 2058 allowed to claim but for the apportionment requirements of this section.

2059 Section 44. Section **59-10-1017**, which is renumbered from Section 59-10-1206.1 is
 2060 renumbered and amended to read:

2061 ~~[59-10-1206.1].~~ **59-10-1017. Utah Educational Savings Plan tax credit.**

2062 (1) As used in this section:

2063 (a) "Account owner" is as defined in Section 53B-8a-102.

2064 ~~[(b) "Claimant" means a resident or nonresident individual that has state taxable~~
 2065 ~~income under this part.]~~

2066 ~~[(c)]~~ (b) "Higher education costs" is as defined in Section 53B-8a-102.

2067 ~~[(d)]~~ (c) "Maximum amount of a qualified investment for the taxable year" means, for
 2068 a taxable year:

2069 (i) for a claimant, estate, or trust that is an account owner, if that claimant, estate, or

2070 trust is ~~[a person]~~ other than husband and wife account owners who file a single return jointly,
 2071 the maximum amount of a qualified investment:

2072 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

2073 (B) increased or decreased for that taxable year in accordance with Subsection

2074 53B-8a-106(1)(f); or

2075 (ii) for claimants who are husband and wife account owners who file a single return
2076 jointly, the maximum amount of a qualified investment:

2077 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

2078 (B) increased or decreased for that taxable year in accordance with Subsection
2079 53B-8a-106(1)(f).

2080 ~~[(e)]~~ (d) "Qualified investment" is as defined in Section 53B-8a-102.

2081 (2) ~~[For taxable years beginning on or after January 1, 2007, a]~~ Except as provided in
2082 Section 59-10-1002.2, a claimant, estate, or trust that is an account owner may claim a
2083 nonrefundable tax credit equal to the product of:

2084 (a) the lesser of:

2085 (i) the amount of a qualified investment the claimant, estate, or trust:

2086 (A) makes during the taxable year; and

2087 (B) does not deduct;

2088 (I) for a claimant, on the claimant's federal individual income tax return; or

2089 (II) for an estate or trust, on the estate's or trust's federal income tax return; or

2090 (ii) the maximum amount of a qualified investment for the taxable year if the amount

2091 described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified investment

2092 for the taxable year; and

2093 ~~[(b) (i) for the taxable year beginning on or after January 1, 2007, but beginning on or~~
2094 ~~before December 31, 2007, 5.35%; or]~~

2095 ~~[(ii) for taxable years beginning on or after January 1, 2008, 5%.]~~

2096 (b) 5%.

2097 (3) A tax credit under this section may not be carried forward or carried back.

2098 Section 45. Section **59-10-1018**, which is renumbered from Section 59-10-1206.2 is
2099 renumbered and amended to read:

2100 ~~[59-10-1206.2].~~ **59-10-1018. Definitions -- Nonrefundable taxpayer tax**
2101 **credits.**

2102 (1) As used in this section:

2103 ~~[(a) "Claimant" means a resident or nonresident individual that has state taxable~~
2104 ~~income under this part.]~~

2105 ~~[(b)]~~ (a) "Head of household filing status" means a head of household, as defined in
 2106 Section 2(b), Internal Revenue Code, who files a single return.

2107 ~~[(c)]~~ (b) "Joint filing status" means:

2108 (i) a husband and wife who file a single return jointly; or

2109 (ii) a surviving spouse, as defined in Section 2(a), Internal Revenue Code, who files a
 2110 single return.

2111 ~~[(d)]~~ (c) "Single filing status" means:

2112 (i) a single individual who files a single return; or

2113 (ii) a married individual who:

2114 (A) does not file a single return jointly with that individual's spouse; and

2115 (B) files a single return.

2116 (2) Except as provided in Section ~~[59-10-1206.9]~~ 59-10-1002.2, and subject to
 2117 Subsections (3) through (5), ~~[for taxable years beginning on or after January 1, 2008,]~~ a
 2118 claimant may claim a nonrefundable tax credit against taxes otherwise due under this part equal
 2119 to the sum of:

2120 (a) (i) for a claimant that deducts the standard deduction on the claimant's federal
 2121 individual income tax return for the taxable year, 6% of the amount the claimant deducts as
 2122 allowed as the standard deduction on the claimant's federal individual income tax return for
 2123 that taxable year; or

2124 (ii) for a claimant that itemizes deductions on the claimant's federal individual income
 2125 tax return for the taxable year, the product of:

2126 (A) the difference between:

2127 (I) the amount the claimant deducts as allowed as an itemized deduction on the
 2128 claimant's federal individual income tax return for that taxable year; and

2129 (II) any amount of state or local income taxes the claimant deducts as allowed as an
 2130 itemized deduction on the claimant's federal individual income tax return for that taxable year;
 2131 and

2132 (B) 6%; and

2133 (b) ~~[6%]~~ the product of:

2134 (i) 75% of the total amount the claimant ~~[would have been allowed to claim]~~ deducts
 2135 as allowed as a personal exemption deduction on the claimant's ~~[state]~~ federal individual

2136 income tax return [~~had the claimant filed an individual income tax return under Part 1,~~
2137 ~~Determination and Reporting of Tax Liability and Information, for the taxable year]~~ for that
2138 taxable year; and

2139 (ii) 6%.

2140 (3) A claimant may not carry forward or carry back a tax credit under this section.

2141 (4) The tax credit allowed by Subsection (2) shall be reduced by \$.013 for each dollar
2142 by which a claimant's state taxable income exceeds:

2143 (a) for a claimant who has a single filing status, \$12,000;

2144 (b) for a claimant who has a head of household filing status, \$18,000; or

2145 (c) for a claimant who has a joint filing status, \$24,000.

2146 (5) (a) For taxable years beginning on or after January 1, 2009, the commission shall
2147 increase or decrease the following dollar amounts by a percentage equal to the percentage
2148 difference between the consumer price index for the preceding calendar year and the consumer
2149 price index for calendar year 2007:

2150 (i) the dollar amount listed in Subsection (4)(a); and

2151 (ii) the dollar amount listed in Subsection (4)(b).

2152 (b) After the commission increases or decreases the dollar amounts listed in Subsection
2153 (5)(a), the commission shall round those dollar amounts listed in Subsection (5)(a) to the
2154 nearest whole dollar.

2155 (c) After the commission rounds the dollar amounts as required by Subsection (5)(b),
2156 the commission shall increase or decrease the dollar amount listed in Subsection (4)(c) so that
2157 the dollar amount listed in Subsection (4)(c) is equal to the product of:

2158 (i) the dollar amount listed in Subsection (4)(a); and

2159 (ii) two.

2160 (d) For purposes of Subsection (5)(a), the commission shall calculate the consumer
2161 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

2162 Section 46. Section **59-10-1019**, which is renumbered from Section 59-10-1206.3 is
2163 renumbered and amended to read:

2164 ~~[59-10-1206.3].~~ **59-10-1019. Definitions -- Nonrefundable retirement tax**
2165 **credits.**

2166 (1) As used in this section:

- 2167 (a) "Eligible age 65 or older retiree" means a [~~resident or nonresident individual~~]
 2168 claimant, regardless of whether that [~~individual~~] claimant is retired, who:
- 2169 (i) is 65 years of age or older; and
 2170 (ii) was born on or before December 31, 1952[~~;~~ and].
 2171 [~~(iii) has state taxable income under this part.~~]
- 2172 (b) (i) "Eligible retirement income" means income received by an eligible under age 65
 2173 retiree as a pension or annuity if that pension or annuity is:
- 2174 (A) paid to the eligible under age 65 retiree or the surviving spouse of an eligible under
 2175 age 65 retiree; and
- 2176 (B) (I) paid from an annuity contract purchased by an employer under a plan that meets
 2177 the requirements of Section 404(a)(2), Internal Revenue Code;
- 2178 (II) purchased by an employee under a plan that meets the requirements of Section 408,
 2179 Internal Revenue Code; or
- 2180 (III) paid by:
- 2181 (Aa) the United States;
 2182 (Bb) a state or a political subdivision of a state; or
 2183 (Cc) the District of Columbia.
- 2184 (ii) "Eligible retirement income" does not include amounts received by the spouse of a
 2185 living eligible under age 65 retiree because of the eligible under age 65 retiree's having been
 2186 employed in a community property state.
- 2187 (c) "Eligible under age 65 retiree" means a [~~resident or nonresident individual~~]
 2188 claimant, regardless of whether that [~~individual~~] claimant is retired, who:
- 2189 (i) is younger than 65 years of age;
 2190 (ii) was born on or before December 31, 1952; and
 2191 (iii) has eligible retirement income for the taxable year for which a tax credit is claimed
 2192 under this section[~~;~~ and].
 2193 [~~(iv) has state taxable income under this part.~~]
- 2194 (d) "Head of household filing status" is as defined in Section [~~59-10-1206.2~~]
 2195 59-10-1018.
- 2196 (e) "Joint filing status" is as defined in Section [~~59-10-1206.2~~] 59-10-1018.
- 2197 (f) "Married filing separately status" means a married individual who:

2198 (i) does not file a single return jointly with that individual's spouse; and
2199 (ii) files a single return.

2200 (g) "Modified adjusted gross income" means the sum of an eligible age 65 or older
2201 retiree's or eligible under age 65 retiree's:

2202 (i) adjusted gross income for the taxable year for which a tax credit is claimed under
2203 this section; and

2204 (ii) any interest income that is not included in adjusted gross income for the taxable
2205 year described in Subsection (1)(g)(i).

2206 (h) "Single filing status" means a single individual who files a single return.

2207 (2) Except as provided in Section [~~59-10-1206.9~~] 59-10-1002.2 and subject to
2208 Subsections (3) through (6)[, for taxable years beginning on or after January 1, 2008]:

2209 (a) each eligible age 65 or older retiree may claim a nonrefundable tax credit of \$450
2210 against taxes otherwise due under this part; or

2211 (b) each eligible under age 65 retiree may claim a nonrefundable tax credit against
2212 taxes otherwise due under this part in an amount equal to the lesser of:

2213 (i) \$288; or

2214 (ii) the product of:

2215 (A) the eligible under age 65 retiree's eligible retirement income for the taxable year for
2216 which the eligible under age 65 retiree claims a tax credit under this section; and

2217 (B) 6%.

2218 (3) A tax credit under this section may not be carried forward or carried back.

2219 (4) The sum of the tax credits allowed by Subsection (2)(a) claimed on one return filed
2220 under this part shall be reduced by \$.025 for each dollar by which an eligible age 65 or older
2221 retiree's modified adjusted gross income exceeds:

2222 (a) for an eligible age 65 or older retiree who has a married filing separately status,
2223 \$16,000;

2224 (b) for an eligible age 65 or older retiree who has a single filing status, \$25,000; or

2225 (c) for an eligible age 65 or older retiree who has a head of household filing status or a
2226 joint filing status, \$32,000.

2227 (5) The sum of the tax credits allowed by Subsection (2)(b) claimed on one return filed
2228 under this part shall be reduced by \$.025 for each dollar by which an eligible under age 65

2229 retiree's modified adjusted gross income exceeds:

2230 (a) for an eligible under age 65 retiree who has a married filing separately status,
2231 \$16,000;

2232 (b) for an eligible under age 65 retiree who has a single filing status, \$25,000; or

2233 (c) for an eligible under age 65 retiree who has a head of household filing status or a
2234 joint filing status, \$32,000.

2235 (6) For purposes of determining the ownership of items of retirement income under this
2236 section, common law doctrine shall be applied in all cases even though some items of
2237 retirement income may have originated from service or investments in a community property
2238 state.

2239 Section 47. Section **59-10-1020** is enacted to read:

2240 **59-10-1020. Nonrefundable estate or trust tax credit.**

2241 (1) For taxable years beginning on or after January 1, 2008, an estate or trust may claim
2242 a nonrefundable tax credit against taxes otherwise due under Part 2, Trusts and Estates, equal
2243 to the product of:

2244 (a) the sum of:

2245 (i) the amount that a resident or nonresident estate or trust deducts under Section 163,
2246 Internal Revenue Code, for interest paid or accrued, as allowed on the resident or nonresident
2247 estate's or trust's federal income tax return for estates and trusts for the taxable year;

2248 (ii) the amount that a resident or nonresident estate or trust deducts under Section 164,
2249 Internal Revenue Code, for taxes paid or accrued other than for any amount paid or accrued for
2250 state or local income taxes for the taxable year, as allowed on the resident or nonresident
2251 estate's or trust's federal income tax return for estates and trusts for the taxable year;

2252 (iii) the amount that a resident or nonresident estate or trust other than a qualified
2253 nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a
2254 charitable contribution deduction, as allowed on the resident or nonresident estate's or trust's
2255 federal income tax return for estates and trusts for the taxable year;

2256 (iv) subject to Subsection (3), the amount that a resident or nonresident estate or trust
2257 deducts as an attorney, accountant, or return preparer fee, as allowed on the resident or
2258 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
2259 year; and

2260 (v) subject to Subsection (3), the amount that a resident or nonresident estate or trust
2261 deducts as an other deduction or miscellaneous itemized deduction, as allowed on the resident
2262 or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
2263 year; and

2264 (b) 6%.

2265 (2) An estate or trust may not carry forward or carry back a tax credit under this
2266 section.

2267 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

2268 (a) for purposes of Subsection (1)(a)(iv), the commission may make rules for
2269 determining what constitutes an attorney, accountant, or return preparer fee if that attorney,
2270 accountant, or return preparer fee is consistent with an attorney, accountant, or return preparer
2271 fee that may be deducted on a federal income tax return for estates and trusts; or

2272 (b) for purposes of Subsection (1)(a)(v), the commission may make rules for
2273 determining what constitutes an other deduction or miscellaneous itemized deduction if that
2274 other deduction or miscellaneous itemized deduction is consistent with an other deduction or
2275 miscellaneous itemized deduction that may be deducted on a federal income tax return for
2276 estates and trusts.

2277 Section 48. Section **59-10-1021** is enacted to read:

2278 **59-10-1021. Nonrefundable medical care savings account tax credit.**

2279 (1) As used in this section:

2280 (a) "Account administrator" is as defined in Section 31A-32a-102.

2281 (b) "Account holder" is as defined in Section 31A-32a-102.

2282 (c) "Eligible medical expense" is as defined in Section 31A-32a-102.

2283 (d) "Eligible spouse claimants" means claimants who are spouses if:

2284 (i) the claimants file a single return jointly as husband and wife;

2285 (ii) neither spouse is covered by:

2286 (A) health care insurance as defined in Section 31A-1-301; or

2287 (B) a self-funded plan that covers the other spouse; and

2288 (iii) each spouse is an account holder.

2289 (e) "Medical care savings account" is as defined in Section 31A-32a-102.

2290 (2) Except as provided in Section 59-10-1002.2 and subject to Subsections (3) and (4),

2291 for taxable years beginning on or after January 1, 2008, a claimant may claim a nonrefundable
2292 tax credit for:

2293 (a) a contribution:

2294 (i) made during the taxable year;

2295 (ii) made to a medical care savings account in accordance with Title 31A, Chapter 32a,
2296 Medical Care Savings Account Act;

2297 (iii) that is accepted by the account administrator; and

2298 (iv) that the claimant does not deduct on the claimant's federal individual income tax
2299 return under Section 220, Internal Revenue Code; and

2300 (b) interest on the contribution described in Subsection (2)(a).

2301 (3) (a) For eligible spouse claimants, a tax credit under this section is equal to the
2302 product of:

2303 (i) the greater of:

2304 (A) the sum of:

2305 (I) the amount contributed in accordance with Title 31A, Chapter 32a, Medical Care
2306 Savings Account Act, by or on behalf of the husband, not to exceed the amount described in
2307 Subsection 31A-32a-103(2)(a)(i); and

2308 (II) the amount contributed in accordance with Title 31A, Chapter 32a, Medical Care
2309 Savings Account Act, by or on behalf of the wife, not to exceed the amount described in
2310 Subsection 31A-32a-103(2)(a)(i); or

2311 (B) an amount equal to the sum of all eligible medical expenses paid by the eligible
2312 spouse claimants on behalf of:

2313 (I) the husband;

2314 (II) the wife; or

2315 (III) a dependent of the:

2316 (Aa) husband; or

2317 (Bb) wife; and

2318 (ii) 5%.

2319 (b) For a claimant other than eligible spouse claimants, a tax credit under this section is
2320 equal to the product of:

2321 (i) the greater of:

2322 (A) the amount contributed by or on behalf of the claimant, not to exceed the amount
 2323 described in Subsection 31A-32a-103(2)(a)(i); or

2324 (B) an amount equal to the sum of all eligible medical expenses paid by the claimant
 2325 on behalf of:

2326 (I) the claimant;

2327 (II) the claimant's spouse; or

2328 (III) a dependent of the claimant; and

2329 (ii) 5%.

2330 (4) A tax credit under this section may not be carried forward or carried back.

2331 Section 49. Section **59-10-1106** is amended to read:

2332 **59-10-1106. Renewable energy tax credit.**

2333 (1) As used in this section:

2334 (a) "Active solar system" is as defined in Section 59-10-1014.

2335 (b) "Biomass system" is as defined in Section 59-10-1014.

2336 (c) "Business entity" is as defined in Section 59-10-1014.

2337 (d) "Commercial energy system" means any active solar, passive solar, geothermal
 2338 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
 2339 biomass system used to supply energy to a commercial unit or as a commercial enterprise.

2340 (e) "Commercial enterprise" means a business entity [~~whose purpose is to produce~~]
 2341 that:

2342 (i) is a claimant, estate, or trust; and

2343 (ii) has the purpose of producing electrical, mechanical, or thermal energy for sale from
 2344 a commercial energy system.

2345 (f) (i) "Commercial unit" means any building or structure that a business entity that is a
 2346 claimant, estate, or trust uses to transact its business.

2347 (ii) Notwithstanding Subsection (1)(f)(i):

2348 (A) in the case of an active solar system used for agricultural water pumping or a wind
 2349 system, each individual energy generating device shall be a commercial unit; and

2350 (B) if an energy system is the building or structure that a business entity that is a
 2351 claimant, estate, or trust uses to transact its business, a commercial unit is the complete energy
 2352 system itself.

- 2353 (g) "Direct-use geothermal system" is as defined in Section 59-10-1014.
- 2354 (h) "Geothermal electricity" is as defined in Section 59-10-1014.
- 2355 (i) "Geothermal heat-pump system" is as defined in Section 59-10-1014.
- 2356 (j) "Hydroenergy system" is as defined in Section 59-10-1014.
- 2357 ~~[(k) "Individual taxpayer" means any person who is a taxpayer as defined in Section~~
- 2358 ~~59-10-103 and an individual as defined in Section 59-10-103.]~~
- 2359 ~~[(h)]~~ (k) "Passive solar system" is as defined in Section 59-10-1014.
- 2360 ~~[(m)]~~ (l) "Utah Geological Survey" means the Utah Geological Survey established in
- 2361 Section 63-73-5.
- 2362 ~~[(n)]~~ (m) "Wind system" is as defined in Section 59-10-1014.
- 2363 (2) (a) (i) ~~[For taxable years beginning on or after January 1, 2007, a]~~ A business entity
- 2364 that is a claimant, estate, or trust that purchases or participates in the financing of a commercial
- 2365 energy system situated in Utah is entitled to a refundable tax credit as provided in this
- 2366 Subsection (2)(a) if the commercial energy system does not use wind, geothermal electricity, or
- 2367 biomass equipment capable of producing a total of 660 or more kilowatts of electricity and:
- 2368 (A) the commercial energy system supplies all or part of the energy required by
- 2369 commercial units owned or used by the business entity that is a claimant, estate, or trust; or
- 2370 (B) the business entity that is a claimant, estate, or trust sells all or part of the energy
- 2371 produced by the commercial energy system as a commercial enterprise.
- 2372 (ii) (A) A business entity that is a claimant, estate, or trust is entitled to a tax credit of
- 2373 up to 10% of the reasonable costs of any commercial energy system installed, including
- 2374 installation costs, against any tax due under this chapter for the taxable year in which the
- 2375 commercial energy system is completed and placed in service.
- 2376 (B) Notwithstanding Subsection (2)(a)(ii)(A), the total amount of the credit under this
- 2377 Subsection (2)(a) may not exceed \$50,000 per commercial unit.
- 2378 (C) The credit under this Subsection (2)(a) is allowed for any commercial energy
- 2379 system completed and placed in service on or after January 1, 2007.
- 2380 (iii) A business entity that is a claimant, estate, or trust that leases a commercial energy
- 2381 system installed on a commercial unit is eligible for the tax credit under this Subsection (2)(a)
- 2382 if the lessee can confirm that the lessor irrevocably elects not to claim the credit.
- 2383 (iv) Only the principal recovery portion of the lease payments, which is the cost

2384 incurred by a business entity that is a claimant, estate, or trust in acquiring a commercial energy
2385 system, excluding interest charges and maintenance expenses, is eligible for the tax credit
2386 under this Subsection (2)(a).

2387 (v) A business entity that is a claimant, estate, or trust that leases a commercial energy
2388 system is eligible to use the tax credit under this Subsection (2)(a) for a period no greater than
2389 seven years from the initiation of the lease.

2390 (b) (i) [~~For taxable years beginning on or after January 1, 2007, a~~] A business entity
2391 that is a claimant, estate, or trust that owns a commercial energy system situated in Utah using
2392 wind, geothermal electricity, or biomass equipment capable of producing a total of 660 or more
2393 kilowatts of electricity is entitled to a refundable tax credit as provided in this section if:

2394 (A) the commercial energy system supplies all or part of the energy required by
2395 commercial units owned or used by the business entity that is a claimant, estate, or trust; or

2396 (B) the business entity that is a claimant, estate, or trust sells all or part of the energy
2397 produced by the commercial energy system as a commercial enterprise.

2398 (ii) A business entity that is a claimant, estate, or trust is entitled to a tax credit under
2399 this Subsection (2)(b) equal to the product of:

2400 (A) 0.35 cents; and

2401 (B) the kilowatt hours of electricity produced and either used or sold during the taxable
2402 year.

2403 (iii) The credit allowed by this Subsection (2)(b):

2404 (A) may be claimed for production occurring during a period of 48 months beginning
2405 with the month in which the commercial energy system is placed in service; and

2406 (B) may not be carried forward or back.

2407 (iv) A business entity that is a claimant, estate, or trust that leases a commercial energy
2408 system installed on a commercial unit is eligible for the tax credit under this section if the
2409 lessee can confirm that the lessor irrevocably elects not to claim the credit.

2410 (3) The tax credits provided for under this section are in addition to any tax credits
2411 provided under the laws or rules and regulations of the United States.

2412 (4) (a) The Utah Geological Survey may set standards for commercial energy systems
2413 claiming a tax credit under Subsection (2)(a) that cover the safety, reliability, efficiency,
2414 leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax

2415 credit use the state's renewable and nonrenewable energy resources in an appropriate and
 2416 economic manner.

2417 (b) A tax credit may not be taken under this section until the Utah Geological Survey
 2418 has certified that the commercial energy system has been completely installed and is a viable
 2419 system for saving or production of energy from renewable resources.

2420 (5) The Utah Geological Survey and the commission may make rules in accordance
 2421 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are necessary to
 2422 implement this section.

2423 (6) (a) On or before October 1, 2012, and every five years thereafter, the Utah Tax
 2424 Review Commission shall review each tax credit provided by this section and make
 2425 recommendations to the Revenue and Taxation Interim Committee concerning whether the
 2426 credit should be continued, modified, or repealed.

2427 (b) The Utah Tax Review Commission's report under Subsection (6)(a) shall include
 2428 information concerning the cost of the credit, the purpose and effectiveness of the credit, and
 2429 the state's benefit from the credit.

2430 Section 50. Section **59-10-1301** is enacted to read:

2431 **Part 13. Individual Income Tax Contribution Act**

2432 **59-10-1301. Title.**

2433 This part is known as the "Individual Income Tax Contribution Act."

2434 Section 51. Section **59-10-1302** is enacted to read:

2435 **59-10-1302. Definitions.**

2436 As used in this part, "contribution" means a contribution a resident or nonresident
 2437 individual makes on an individual income tax return as allowed by this part.

2438 Section 52. Section **59-10-1303** is enacted to read:

2439 **59-10-1303. Contributions -- Amount -- Procedure for designating a contribution**
 2440 **-- Joint return -- Contribution irrevocable.**

2441 (1) A resident or nonresident individual that makes a contribution under this part, other
 2442 than Section 59-10-1311, may designate as the contribution any whole dollar amount of \$1 or
 2443 more.

2444 (2) If a resident or nonresident individual designating a contribution under this part
 2445 other than Section 59-10-1311:

2446 (a) is owed an individual income tax refund for the taxable year, the amount of the
 2447 contribution under this part shall be deducted from the resident or nonresident individual's
 2448 individual income tax refund; or

2449 (b) is not owed an individual income tax refund for the taxable year, the resident or
 2450 nonresident individual may remit a contribution under this part with the resident or nonresident
 2451 individual's individual income tax return.

2452 (3) If a husband and wife file a single individual income tax return jointly, a
 2453 contribution under this part, other than Section 59-10-1311, shall be a joint contribution.

2454 (4) A contribution under this part is irrevocable for the taxable year for which the
 2455 resident or nonresident individual makes the contribution.

2456 Section 53. Section **59-10-1304**, which is renumbered from Section 59-10-551 is
 2457 renumbered and amended to read:

2458 **[59-10-551]. 59-10-1304. Removal of designation and prohibitions on**
 2459 **collection for certain contributions on income tax form -- Conditions for removal and**
 2460 **prohibitions on collection -- Commission reporting requirements.**

2461 (1) (a) If a contribution or combination of contributions described in Subsection (1)(b)
 2462 generate less than \$30,000 per year for three consecutive years, the commission shall remove
 2463 the designation for the contribution from the individual income tax return and may not collect
 2464 the contribution from a resident or nonresident individual beginning two taxable years after the
 2465 three-year period for which the contribution generates less than \$30,000 per year.

2466 (b) The following contributions apply to Subsection (1)(a):

2467 (i) the contribution provided for in Section [~~59-10-530~~] 59-10-1305;

2468 (ii) the contribution provided for in Section [~~59-10-530.5~~] 59-10-1306;

2469 (iii) the sum of the contributions provided for in Subsection [~~59-10-549~~]

2470 59-10-1307(1)(a);

2471 (iv) the contribution provided for in Subsection [~~59-10-549~~] 59-10-1307(1)(b);

2472 (v) the contribution provided for in Section [~~59-10-550~~] 59-10-1308;

2473 (vi) the contribution provided for in Section [~~59-10-550.1~~] 59-10-1309; or

2474 (vii) the contribution provided for in Section [~~59-10-550.2~~] 59-10-1310.

2475 (2) If the commission removes the designation for a contribution under Subsection (1),
 2476 the commission shall report to the Revenue and Taxation Interim Committee that the

2477 commission removed the designation on or before the November interim meeting of the year in
2478 which the commission determines to remove the designation.

2479 Section 54. Section **59-10-1305**, which is renumbered from Section 59-10-530 is
2480 renumbered and amended to read:

2481 **[59-10-530].** **59-10-1305. Nongame wildlife contribution -- Credit to**
2482 **Wildlife Resources Account.**

2483 ~~[(1) The Legislature hereby declares that wildlife species which are endangered,~~
2484 ~~threatened with extinction, not commonly pursued, killed, or consumed either for sport or~~
2485 ~~profit, and are not nuisance predators presently being brought under control by the state~~
2486 ~~referred to herein as "nongame wildlife," have need of special protection and that it is in the~~
2487 ~~public interest to preserve, protect, perpetuate, and enhance nongame wildlife resources of this~~
2488 ~~state through preservation of a satisfactory environment and an ecological balance. The~~
2489 ~~Legislature specifically recognizes that such nongame wildlife includes protected wildlife,~~
2490 ~~endangered and threatened wildlife, aquatic wildlife, specialized habitat wildlife, both~~
2491 ~~terrestrial and aquatic types, and mollusks, crustaceans, and other invertebrates under the~~
2492 ~~jurisdiction of the Division of Wildlife Resources. This section is enacted to provide a means~~
2493 ~~by which such protection may be financially aided through a voluntary check-off designation~~
2494 ~~on state income tax return forms. The intent of the Legislature is that this program of the~~
2495 ~~income tax check-off is supplemental to any other funding and in no way is intended to take the~~
2496 ~~place of the funding that would otherwise be appropriated for this purpose.]~~

2497 (1) As used in this section, "nongame wildlife" means wildlife species that are:

2498 (a) (i) protected;

2499 (ii) endangered; or

2500 (iii) threatened with extinction;

2501 (b) under the jurisdiction of the Division of Wildlife Resources, including:

2502 (i) aquatic wildlife;

2503 (ii) a crustacean;

2504 (iii) an invertebrate;

2505 (iv) a mollusk; or

2506 (v) specialized habitat wildlife, including an aquatic or terrestrial type of specialized
2507 habitat wildlife;

2508 (c) not commonly pursued, killed, or consumed for sport or profit; and
 2509 (d) not nuisance predators presently being brought under control by the state.
 2510 (2) Except as provided in Section [~~59-10-551, each individual taxpayer required to file~~
 2511 ~~a return pursuant to Section 59-10-502]~~ 59-10-1304, a resident or nonresident individual that
 2512 files an individual income tax return under this chapter may designate on the resident or
 2513 nonresident individual's individual income tax return a contribution [of \$1, \$5, \$10, or another
 2514 amount not less than \$1, or no contribution, to the state Nongame Wildlife Program] as
 2515 provided in this part to preserve, protect, perpetuate, and enhance nongame wildlife resources
 2516 of the state through preservation of a satisfactory environment and an ecological balance. [If
 2517 the return is a joint return, any amount designated as a contribution to this program is to be
 2518 deducted from the individual's state tax refund and shall be a joint contribution. This option,
 2519 once exercised, is irrevocable during the tax year in which it was effective.]

2520 [~~(3) The commission may promulgate rules to effectuate the provisions of this section.]~~

2521 [~~(4)~~] (3) The commission shall:

2522 (a) determine annually the total amount of contributions designated [pursuant to] in
 2523 accordance with this section; and [shall report such amount to the state treasurer who shall
 2524 credit such amount]

2525 (b) credit the amount described in Subsection (3)(a) to the Wildlife Resources Account
 2526 [as provided for in Section 23-14-14] in accordance with Section 23-14-13.

2527 [~~(5) This section applies to calendar-year taxpayers beginning January 1, 1980, and to~~
 2528 ~~fiscal-year taxpayers for any part of the taxable year accruing after December 31, 1979, and to~~
 2529 ~~all taxable years thereafter.]~~

2530 Section 55. Section **59-10-1306**, which is renumbered from Section 59-10-530.5 is
 2531 renumbered and amended to read:

2532 [~~59-10-530.5~~]. **59-10-1306. Homeless contribution -- Credit to Pamela**
 2533 **Atkinson Homeless Trust Account.**

2534 (1) [~~(a)~~] Except as provided in Section [~~59-10-551, each taxpayer required to file a~~
 2535 ~~return pursuant to Section 59-10-502 may designate on the return a contribution of \$2, \$5, \$10,~~
 2536 ~~or another amount not less than \$2, or no contribution,]~~ 59-10-1304, a resident or nonresident
 2537 individual that files an individual income tax return under this chapter may designate on the
 2538 resident or nonresident individual's individual income tax return a contribution to the Pamela

2539 Atkinson Homeless Trust Account as provided in this part.

2540 ~~[(b) Any amount designated as a contribution to this program is to be deducted from~~
2541 ~~the individual's state tax refund and, if a joint return, shall be a joint contribution.]~~

2542 ~~[(c) This option, once exercised, is irrevocable during the tax year in which it was~~
2543 ~~effective.]~~

2544 ~~[(d) If no refund is due, the taxpayer may remit the contribution with the return.]~~

2545 ~~[(2) The commission may make rules to implement this section.]~~

2546 ~~[(3)]~~ (2) The commission shall:

2547 (a) determine annually the total amount of contributions designated ~~[pursuant to]~~ in
2548 accordance with this section; and ~~[shall report such amount to the state treasurer who shall~~
2549 ~~credit such amount]~~

2550 (b) credit the amount described in Subsection (2)(a) to the Pamela Atkinson Homeless
2551 Trust Account [as provided for in] created by Section 9-4-803.

2552 ~~[(4) This section applies to calendar-year taxpayers beginning January 1, 1988, and to~~
2553 ~~fiscal-year taxpayers for any part of the taxable year accruing after December 31, 1988, and to~~
2554 ~~all taxable years thereafter.]~~

2555 Section 56. Section **59-10-1307**, which is renumbered from Section 59-10-549 is
2556 renumbered and amended to read:

2557 ~~[59-10-549].~~ **59-10-1307. Contributions for education.**

2558 (1) Except as provided in Section ~~[59-10-551, a taxpayer that files a return pursuant to~~
2559 ~~Section 59-10-502]~~ 59-10-1304, a resident or nonresident individual that files an individual
2560 income tax return under this chapter may designate on the resident or nonresident individual's
2561 individual income tax return a contribution as provided in this ~~[section]~~ part to:

2562 (a) (i) the foundation of any school district if that foundation is exempt from federal
2563 income taxation under Section 501(c)(3), Internal Revenue Code; or

2564 (ii) a school district described in Title 53A, Chapter 2, School Districts, if the school
2565 district has not established a foundation; or

2566 (b) a college campus of the Utah College of Applied Technology listed in Section
2567 53B-2a-105~~[-or]~~.

2568 ~~[(c) for taxable years beginning on or after January 1, 2004, but beginning on or before~~
2569 ~~December 31, 2006, the Uniform School Fund.]~~

2570 ~~[(2) (a) A taxpayer may designate as a contribution under this section any whole dollar~~
2571 ~~amount of \$1 or more.]~~

2572 ~~[(b) (i) If the taxpayer is owed an individual income tax refund for the taxable year, the~~
2573 ~~amount of a contribution under this section shall be deducted from the taxpayer's individual~~
2574 ~~income tax refund.]~~

2575 ~~[(ii) If the taxpayer is not owed an individual income tax refund for the taxable year,~~
2576 ~~the taxpayer may remit a contribution under this section with the taxpayer's individual income~~
2577 ~~tax return.]~~

2578 ~~[(c) If a taxpayer files a joint return, the contribution under this section shall be a joint~~
2579 ~~contribution.]~~

2580 ~~[(d) A contribution under this section is irrevocable during the taxable year for which~~
2581 ~~the taxpayer makes the contribution.]~~

2582 ~~[(3)] (2) If a [taxpayer] resident or nonresident individual designates an amount as a~~
2583 ~~contribution under:~~

2584 (a) Subsection (1)(a)(i), but does not designate a particular school district foundation to
2585 receive the contribution, the contribution shall be made to the Utah State Office of Education to
2586 be distributed to one or more associations of foundations:

2587 (i) if those foundations that are members of the association are established in
2588 accordance with Section 53A-4-205; and

2589 (ii) as determined by the Utah State Office of Education; or

2590 (b) Subsection (1)(a)(ii), but does not designate a particular school district to receive
2591 the contribution, the contribution shall be made to the Utah State Office of Education.

2592 ~~[(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
2593 ~~the commission may make rules to implement this section.]~~

2594 ~~[(5)] (3) The commission shall:~~

2595 (a) determine annually the total amount of contributions designated to each entity
2596 described in Subsection (1) in accordance with this section; and

2597 ~~[(b) report this amount to the state treasurer.]~~

2598 ~~[(6) The state treasurer shall credit any contributions reported to the state treasurer in~~
2599 ~~accordance with Subsection (5).]~~

2600 ~~[(a)] (b) subject to Subsection [(3)] (2), [if a taxpayer designates a contribution to an~~

2601 entity listed in Subsection (1)(a) or (b) in accordance with this section, to the entity that is
 2602 designated by the taxpayer; or] credit the amounts described in Subsection (1) to the entities.

2603 [~~(b) if a taxpayer designates a contribution to the Uniform School Fund under~~
 2604 ~~Subsection (1)(c) in accordance with this section, to the Uniform School Fund.]~~

2605 Section 57. Section **59-10-1308**, which is renumbered from Section 59-10-550 is
 2606 renumbered and amended to read:

2607 ~~[59-10-550].~~ **59-10-1308. Children's organ transplants contribution --**
 2608 **Credit to Kurt Oscarson Children's Organ Transplant Trust Account.**

2609 (1) Except as provided in Section [~~59-10-551, a taxpayer who files a return pursuant to~~
 2610 ~~Section 59-10-502]~~ 59-10-1304, a resident or nonresident individual that files an individual
 2611 income tax return under this chapter may designate on the resident or nonresident individual's
 2612 individual income tax return a contribution [of the amount of his refund, if any, or any other
 2613 amount in excess of \$1 to the trust account created in] to the Kurt Oscarson Children's Organ
 2614 Transplant Trust Account created by Section 26-18a-4.

2615 [~~(2) Any amount designated as a contribution to this trust account shall be deducted~~
 2616 ~~from the individual's state tax refund and, if a joint return, is a joint contribution. This option,~~
 2617 ~~once exercised, is irrevocable during the tax year in which it was effective. If no refund is due,~~
 2618 ~~the taxpayer may remit any contribution over \$1 with the return.]~~

2619 [~~(3) The commission may make rules to implement this section.]~~

2620 [~~(4)~~] (2) The commission shall:

2621 (a) determine annually the total amount of contributions designated [under] in
 2622 accordance with this section; and [shall report the amount to the state treasurer, who shall]

2623 (b) credit the amount described in Subsection (2)(a) to the [restricted account] Kurt
 2624 Oscarson Children's Organ Transplant Trust Account created [in] by Section 26-18a-4.

2625 [~~(5) This section applies to calendar-year taxpayers beginning January 1, 1992, and to~~
 2626 ~~fiscal-year taxpayers for any part of the taxable year accruing after December 31, 1992, and to~~
 2627 ~~each subsequent taxable year.]~~

2628 Section 58. Section **59-10-1309**, which is renumbered from Section 59-10-550.1 is
 2629 renumbered and amended to read:

2630 ~~[59-10-550.1].~~ **59-10-1309. Contribution to Wolf Depredation and**
 2631 **Management Restricted Account.**

2632 (1) Except as provided in Section [~~59-10-551, for taxable years beginning on or after~~
2633 ~~January 1, 2004]~~ 59-10-1304, a resident or nonresident individual that files an individual
2634 income tax return under this chapter may designate on the resident or nonresident individual's
2635 individual income tax return a contribution as provided in this section to be:

2636 (a) deposited into the Wolf Depredation and Management Restricted Account created
2637 by Section 23-14-14.1; and

2638 (b) used for the purposes described in Section 23-14-14.1.

2639 [~~(2)(a) A resident or nonresident individual may designate as a contribution under this~~
2640 ~~section any whole dollar amount of \$1 or more.]~~

2641 [~~(b) If a resident or nonresident individual designating a contribution under this~~
2642 ~~section:]~~

2643 [~~(i) is owed an individual income tax refund for the taxable year, the amount of the~~
2644 ~~contribution under this section shall be deducted from the resident or nonresident individual's~~
2645 ~~individual income tax refund; or]~~

2646 [~~(ii) is not owed an individual income tax refund for the taxable year, the resident or~~
2647 ~~nonresident individual may remit a contribution under this section with the resident or~~
2648 ~~nonresident individual's individual income tax return.]~~

2649 [~~(c) If a husband and wife file a single individual income tax return jointly, a~~
2650 ~~contribution under this section shall be a joint contribution.]~~

2651 [~~(d) A contribution under this section is irrevocable for the taxable year for which the~~
2652 ~~resident or nonresident individual makes the contribution.]~~

2653 [~~(3)~~] (2) The commission shall:

2654 (a) determine annually the total amount of contributions designated in accordance with
2655 this section; and

2656 (b) credit the amount described in Subsection [~~(3)~~] (2)(a) to the Wolf Depredation and
2657 Management Restricted Account created by Section 23-14-14.1.

2658 Section 59. Section **59-10-1310**, which is renumbered from Section 59-10-550.2 is
2659 renumbered and amended to read:

2660 [~~59-10-550.2~~]. **59-10-1310. Contribution to Cat and Dog Community Spay**
2661 **and Neuter Program Restricted Account.**

2662 (1) Except as provided in Section [~~59-10-551, for taxable years beginning on or after~~

2663 ~~January 1, 2006]~~ 59-10-1304, a resident or nonresident individual that files an individual
 2664 income tax return under this chapter may designate on the resident or nonresident individual's
 2665 individual income tax return a contribution as provided in this section to be:

2666 (a) deposited into the Cat and Dog Community Spay and Neuter Program Restricted
 2667 Account created by Section 26-48-102; and

2668 (b) distributed by the Department of Health as provided in Section 26-48-102.

2669 ~~[(2) (a) A resident or nonresident individual may designate as a contribution under this
 2670 section any whole dollar amount of \$1 or more.]~~

2671 ~~[(b) If a resident or nonresident individual designating a contribution under this
 2672 section:]~~

2673 ~~[(i) is owed an individual income tax refund for the taxable year, the amount of the
 2674 contribution under this section shall be deducted from the resident or nonresident individual's
 2675 individual income tax refund; or]~~

2676 ~~[(ii) is not owed an individual income tax refund for the taxable year, the resident or
 2677 nonresident individual may remit a contribution under this section with the resident or
 2678 nonresident individual's individual income tax return.]~~

2679 ~~[(c) If a husband and wife file a single individual income tax return jointly, a
 2680 contribution under this section shall be a joint contribution.]~~

2681 ~~[(d) A contribution under this section is irrevocable for the taxable year for which the
 2682 resident or nonresident individual makes the contribution.]~~

2683 ~~[(3)]~~ (2) The commission shall:

2684 (a) determine annually the total amount of contributions designated in accordance with
 2685 this section; and

2686 (b) credit the amount described in Subsection ~~[(3)]~~ (2)(a) to the Cat and Dog
 2687 Community Spay and Neuter Program Restricted Account created by Section 26-48-102.

2688 Section 60. Section **59-10-1311**, which is renumbered from Section 59-10-547 is
 2689 renumbered and amended to read:

2690 ~~[59-10-547].~~ **59-10-1311. Election Campaign Fund contribution --**

2691 **Transfer from General Fund -- Form and procedure.**

2692 ~~[(1) (a) Every individual other than a nonresident alien whose income tax liability, less
 2693 any credit allowed by this chapter, for any taxable year is \$2 or more may designate that \$2 be~~

2694 ~~paid into the Election Campaign Fund established under Section 59-10-548.]~~

2695 (1) (a) A resident or nonresident individual, other than a nonresident alien, may
2696 designate on the resident or nonresident individual's individual income tax return a contribution
2697 of \$2 to the Election Campaign Fund created by Section 59-10-1312, if the resident or
2698 nonresident individual:

2699 (i) has a liability under this chapter for a taxable year of \$2 or more; and

2700 (ii) files a return under this chapter.

2701 (b) The commission shall transfer \$2 from the General Fund to the Election Campaign
2702 Fund for each ~~[campaign designation]~~ contribution made on an individual income tax return
2703 under this Subsection (1).

2704 (c) The transfer described in Subsection (1)(b) shall ~~[come]~~ be made from revenue
2705 generated from ~~[the]~~ state sales and use tax revenues collected in accordance with Chapter 12,
2706 Sales and Use Tax Act.

2707 (2) (a) A ~~[designation]~~ contribution under Subsection (1) may be made with respect to
2708 any taxable year at the time ~~[of filing the]~~ a resident or nonresident individual files a return for
2709 that taxable year.

2710 (b) The ~~[form for the return shall be prepared by the]~~ commission ~~[to include provision~~
2711 ~~for a campaign]~~ shall include the contribution [designation] allowed by this section:

2712 (i) on a return under this chapter; and

2713 (ii) for any political party as defined by Section 20A-1-102 that has qualified as a
2714 political party in the first six months of the calendar year for which the return is prepared.

2715 ~~[(c) The political parties shall be placed on the form in alphabetical order.]~~

2716 ~~[(d) Any individual who chooses to designate funds to the Election Campaign Fund~~
2717 ~~shall place a check mark opposite the name of the political party on the form provided by the~~
2718 ~~commission.]~~

2719 ~~[(e) The form shall also contain a box in which the taxpayer can]~~

2720 (c) The commission shall place a political party described in Subsection (2)(b) on a
2721 return described in Subsection (2)(b) in alphabetical order.

2722 (d) The commission shall include on a return described in Subsection (2)(b):

2723 (i) the option for a resident or nonresident individual to indicate that no contribution is
2724 to be made to any political party[-]; and

2725 (ii) a statement that a contribution a resident or nonresident individual, other than a
 2726 nonresident alien, makes under this section may not:

2727 (A) increase the resident or nonresident individual's tax liability under this chapter; or

2728 (B) reduce the resident or nonresident individual's refund under this chapter.

2729 Section 61. Section **59-10-1312**, which is renumbered from Section 59-10-548 is
 2730 renumbered and amended to read:

2731 **[59-10-548]. 59-10-1312. Election Campaign Fund -- Creation -- Funding**
 2732 **for account -- Disbursement and distribution -- State treasurer requirement to provide a**
 2733 **list of contributions designated to each political party.**

2734 (1) (a) As used in this section, "fund" means the Election Campaign Fund created by
 2735 this section.

2736 [(+)(a)] (b) There is [~~established~~] created an agency fund [~~to be~~] known as the
 2737 "Election Campaign Fund."

2738 [(b)] (c) The fund shall consist of all amounts deposited to [~~it as provided in~~] the fund
 2739 in accordance with Section [~~59-10-547~~] 59-10-1311.

2740 (2) On or before four months after the due date [~~of the returns~~] for filing a return
 2741 required by this chapter in which [~~designations of payment to the fund have been made~~] a
 2742 contribution is made in accordance with Section 59-10-1311, the state treasurer shall:

2743 (a) disburse that portion of the amounts deposited in the fund since the last
 2744 disbursement;

2745 (i) that [~~were~~] are designated for a political party; and

2746 (ii) to the political party to which [~~they were~~] the amounts are designated; and

2747 (b) provide to the political party described in Subsection (2)(a)(ii) a list disclosing, for
 2748 each county, the total amount designated by [~~taxpayers~~] resident or nonresident individuals,
 2749 other than nonresident aliens, in that county.

2750 Section 62. Section **59-10-1401** is enacted to read:

2751 **Part 14. Income Tax Treatment of Pass-Through Entities Act**

2752 **59-10-1401. Title.**

2753 This part is known as the "Income Tax Treatment of Pass-Through Entities Act."

2754 Section 63. Section **59-10-1402** is enacted to read:

2755 **59-10-1402. Definitions.**

2756 As used in this part:

2757 (1) "Limited liability company" includes a foreign limited liability company.

2758 (2) (a) "Pass-through entity" means a business entity that is:

2759 (i) a general partnership;

2760 (ii) a limited liability company;

2761 (iii) a limited liability partnership;

2762 (iv) a limited partnership; or

2763 (v) a business entity similar to Subsections (2)(a)(i) through (iv):

2764 (A) with respect to which the business entity's income or losses are divided among and
 2765 passed through to taxpayers; and

2766 (B) as defined by the commission by rule made in accordance with Title 63, Chapter
 2767 46a, Utah Administrative Rulemaking Act.

2768 (b) "Pass-through entity" does not include a trust.

2769 (3) "Taxpayer" means:

2770 (a) for a general partnership, a partner;

2771 (b) for a limited liability company, a member;

2772 (c) for a limited liability partnership, a partner;

2773 (d) for a limited partnership, a partner; or

2774 (e) for a business entity described in Subsection (2)(a)(v), a member, partner,

2775 shareholder, or other title designated by the commission by rule made in accordance with Title

2776 63, Chapter 46a, Utah Administrative Rulemaking Act.

2777 Section 64. Section **59-10-1403**, which is renumbered from Section 59-10-301 is
 2778 renumbered and amended to read:

2779 **[59-10-301]. 59-10-1403. Pass-through entities -- Income tax treatment --**

2780 **Returns -- Limited liability companies.**

2781 [A partnership] (1) Subject to Subsection (3), a pass-through entity is not subject to
 2782 [the] a tax imposed by this chapter. [Persons carrying on business as partners are liable for the
 2783 tax imposed by this chapter only in their separate or individual capacities.]

2784 (2) The income or losses of a pass-through entity shall be divided among and passed
 2785 through to taxpayers.

2786 (3) A pass-through entity is subject to the return filing requirements of Section

2787 59-10-507.

2788 (4) A pass-through entity that is a limited liability company that transacts business in
 2789 the state shall be classified for purposes of taxation under this title in the same manner as the
 2790 limited liability company is classified for federal income tax purposes.

2791 Section 65. Section **59-10-1404**, which is renumbered from Section 59-10-302 is
 2792 renumbered and amended to read:

2793 ~~[59-10-302].~~ **59-10-1404. Character of an item of income, gain, loss, or**
 2794 **deduction.**

2795 (1) Each item of [partnership] income, gain, loss, or deduction of a pass-through entity
 2796 has the same character for a [partner] taxpayer under this chapter as [it] that item of income,
 2797 gain, loss, or deduction has for federal income tax purposes. [When an item]

2798 (2) If an item of income, gain, loss, or deduction described in Subsection (1) is not
 2799 characterized for federal income tax purposes, [it] that item of income, gain, loss, or deduction
 2800 has the same character for a [partner] taxpayer as if the item of income, gain, loss, or deduction
 2801 is:

2802 (a) realized directly from the source from which the item of income, gain, loss, or
 2803 deduction is realized by the [partnership,] pass-through entity; or

2804 (b) incurred in the same manner as incurred by the [partnership] pass-through entity.

2805 ~~[(2)] (3)~~ (3) In determining state taxable income of a resident [partner any modification]
 2806 taxpayer, any addition or subtraction described in Section 59-10-114 [which] that relates to an
 2807 item of [partnership] income, gain, loss, or deduction of a pass-through entity shall be made in
 2808 accordance with the [partner's] taxpayer's distributive share[-, for federal income tax purposes,];

2809 (a) of the [items] item to which the [modification] addition or subtraction relates[-
 2810 Where a partner's]; and

2811 (b) for federal income tax purposes.

2812 (4) If a taxpayer's distributive share of [any such item] an item of income, gain, loss, or
 2813 deduction described in Subsection (3) is not required to be taken into account separately for
 2814 federal income tax purposes, the [partner's] taxpayer's distributive share of [such] that item of
 2815 income, gain, loss, or deduction shall be determined in accordance with [his] that taxpayer's
 2816 distributive share[-, for federal income tax purposes,];

2817 (a) of [partnership] income or loss relating to the pass-through entity generally; and

2818 (b) for federal income tax purposes.

2819 Section 66. Section **59-10-1405**, which is renumbered from Section 59-10-303 is
2820 renumbered and amended to read:

2821 ~~[59-10-303].~~ **59-10-1405. Nonresident taxpayer's share of income, gain,**
2822 **loss, or deduction of a pass-through entity.**

2823 (1) ~~[In determining the]~~ Subject to Subsection (2), the adjusted gross income of a
2824 nonresident ~~[partner of any partnership, there shall be included only that part]~~ taxpayer shall be
2825 adjusted by only that portion of the taxpayer's distributive share of an item of income, gain,
2826 loss, or deduction of a pass-through entity derived from or connected with sources in this state
2827 ~~[of the partner's distributive share of items of partnership income, gain, loss, and deduction~~
2828 ~~entering into the partner's adjusted gross income, as such part is determined under rules~~
2829 ~~prescribed by the commission in accordance with the general rules in Section 59-10-116].~~

2830 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
2831 commission may make rules for determining the adjustment required by Subsection (1) if those
2832 rules are consistent with the principles of Section 59-10-116.

2833 ~~[(2)]~~ (3) In determining the [sources] source of a nonresident [partner's] taxpayer's
2834 income, [no effect shall be given to a provision in the partnership agreement which] the
2835 following provisions in a pass-through entity agreement may not be considered:

2836 (a) a provision that:

2837 ~~[(a)]~~ (i) characterizes [payments] a payment to the [partner] taxpayer as being for
2838 [services or for]:

2839 (A) a service; or

2840 (B) the use of capital[; or];

2841 (b) except as provided in Subsection (5), a provision that allocates to the [partner]
2842 taxpayer, as income or gain from [sources] a source outside this state, a greater proportion of
2843 the [partner's] taxpayer's distributive share of [partnership] income or gain of the pass-through
2844 entity than the ratio of [partnership] income or gain of the pass-through entity from sources
2845 outside this state to [partnership] income or gain of the pass-through entity from all sources[;
2846 except as authorized in Subsection (4)];

2847 ~~[(b)]~~ (c) except as provided in Subsection (5) a provision that allocates to the [partner]
2848 taxpayer a greater proportion of [a partnership] an item of loss or deduction of the pass-through

2849 entity connected with sources in this state than the [~~partner's~~] taxpayer's proportionate share[
 2850 ~~for federal income tax purposes;~~] of [~~partnership~~] loss or deduction generally[~~;~~ except as
 2851 authorized in Subsection (4)];

2852 (i) relating to the pass-through entity; and

2853 (ii) for federal income tax purposes.

2854 [~~(3)~~] (4) Any [~~modification~~] addition or subtraction described in Section 59-10-114
 2855 that relates to an item of [~~partnership~~] income, gain, loss, or deduction[~~;~~] of a pass-through
 2856 entity shall be made in accordance with the [~~partner's~~] taxpayer's distributive share [~~for federal~~
 2857 ~~income tax purposes of the item to which the modification relates, but limited to the portion of~~
 2858 ~~such item derived from or connected with sources in this state.~~];

2859 (a) of the portion of the item of income, gain, loss, or deduction required to be added or
 2860 subtracted under Section 59-10-114 that is derived from or connected with sources in the state;
 2861 and

2862 (b) for federal income tax purposes.

2863 [~~(4) The~~] (5) (a) Subject to Subsection (5)(b), the commission may[~~;~~ on application,
 2864 by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
 2865 authorize the use of [~~such other~~] one or more methods [of], other than a method described in
 2866 Subsections (1) through (4), for determining:

2867 (i) a nonresident [~~partner's~~] taxpayer's portion of [~~partnership items~~] an item of income,
 2868 gain, loss, or deduction of a pass-through entity derived from or connected with sources in
 2869 [~~this~~] the state[~~;~~ and the modifications related thereto, as may be appropriate and equitable, on
 2870 such terms and conditions as the commission may require.]; and

2871 (ii) the portion of an item of income, gain, loss, or deduction required to be added or
 2872 subtracted under Section 59-10-114 that is derived from or connected with sources in the state.

2873 (b) For purposes of Subsection (5)(a), the commission may authorize the use of one or
 2874 more methods, other than a method described in Subsections (1) through (4), if:

2875 (i) the commission finds that the use of the method is appropriate and equitable; and

2876 (ii) the taxpayer applies to the commission.

2877 [~~(5)~~] (6) (a) A nonresident [~~partner's~~] taxpayer's distributive share of [~~items~~] an item of
 2878 income, gain, loss, or deduction shall be determined [~~under Subsection 59-10-302(2)~~] in
 2879 accordance with the principles of Subsections 59-10-1404(3) and (4).

2880 (b) The character of [~~partnership items~~] an item of income, gain, loss, or deduction for
2881 a nonresident [~~partner~~] taxpayer shall be determined [~~under Subsection 59-10-302(1)~~] in
2882 accordance with the principles of Subsections 59-10-1404(1) and (2).

2883 Section 67. **Repealer.**

2884 This bill repeals:

2885 Section **59-10-206, Character of state taxable income of nonresident estate or trust.**

2886 Section **59-10-801, Taxation of limited liability companies.**

2887 Section **59-10-1201, Title.**

2888 Section **59-10-1202, Definitions.**

2889 Section **59-10-1203, Single rate tax for resident or nonresident individual -- Tax**
2890 **rate -- Contributions -- Exemption -- Amended returns.**

2891 Section **59-10-1204, Additions to and subtractions from adjusted gross income of a**
2892 **resident or nonresident individual.**

2893 Section **59-10-1205, Adjustments to adjusted gross income of a resident or**
2894 **nonresident individual.**

2895 Section **59-10-1206, Tax credits.**

2896 Section **59-10-1207, Administration, collection, and enforcement of tax.**

2897 Section 68. **Retrospective operation.**

2898 This bill has retrospective operation for taxable years beginning on or after January 1,
2899 2008.

Legislative Review Note
as of 11-15-07 4:08 PM

Office of Legislative Research and General Counsel