

**Representative John Dougall** proposes the following substitute bill:

**HIGHER EDUCATION TAX CREDIT AND CONTRIBUTION**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John Dougall**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**General Description:**

This bill creates a tax credit for higher education tuition and fees and allows an individual to designate on the individual's income tax return a contribution to a Utah Educational Savings Plan account.

**Highlighted Provisions:**

This bill:

▶ allows a claimant to claim a nonrefundable tax credit for tuition and mandatory fees for the claimant's enrollment in an ~~Ⓢ~~→ eligible ←~~Ⓢ~~ institution ~~Ⓢ~~→ [~~within the state system of higher education~~] ←~~Ⓢ~~ ;

▶ limits the nonrefundable tax credit to 5% of the claimant's tax liability before tax credits;

▶ allows the claimant to carry forward the nonrefundable tax credit if the amount of the tax credit exceeds 5% of the claimant's tax liability before tax credits; and

▶ allows a resident or nonresident individual to designate on the individual's income tax return a contribution to a Utah Educational Savings Plan account in the amount of the individual's entire individual income tax refund.

**Monies Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 This bill has retrospective operation for a taxable year beginning on or after January 1,  
28 2009.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-1-403**, as last amended by Laws of Utah 2008, Chapters 3, 382, and 384

32 **59-10-1303**, as enacted by Laws of Utah 2008, Chapter 389

33 ENACTS:

34 **59-10-1025**, Utah Code Annotated 1953

35 **59-10-1313**, Utah Code Annotated 1953



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

38 Section 1. Section **59-1-403** is amended to read:

39 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

40 (1) (a) Any of the following may not divulge or make known in any manner any  
41 information gained by that person from any return filed with the commission:

42 (i) a tax commissioner;

43 (ii) an agent, clerk, or other officer or employee of the commission; or

44 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or  
45 town.

46 (b) An official charged with the custody of a return filed with the commission is not  
47 required to produce the return or evidence of anything contained in the return in any action or  
48 proceeding in any court, except:

49 (i) in accordance with judicial order;

50 (ii) on behalf of the commission in any action or proceeding under:

51 (A) this title; or

52 (B) other law under which persons are required to file returns with the commission;

53 (iii) on behalf of the commission in any action or proceeding to which the commission  
54 is a party; or

55 (iv) on behalf of any party to any action or proceeding under this title if the report or  
56 facts shown by the return are directly involved in the action or proceeding.

57 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may  
58 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically  
59 pertinent to the action or proceeding.

60 (2) This section does not prohibit:

61 (a) a person or that person's duly authorized representative from receiving a copy of  
62 any return or report filed in connection with that person's own tax;

63 (b) the publication of statistics as long as the statistics are classified to prevent the  
64 identification of particular reports or returns; and

65 (c) the inspection by the attorney general or other legal representative of the state of the  
66 report or return of any taxpayer:

67 (i) who brings action to set aside or review a tax based on the report or return;

68 (ii) against whom an action or proceeding is contemplated or has been instituted under  
69 this title; or

70 (iii) against whom the state has an unsatisfied money judgment.

71 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the  
72 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative  
73 Rulemaking Act, provide for a reciprocal exchange of information with:

74 (i) the United States Internal Revenue Service; or

75 (ii) the revenue service of any other state.

76 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
77 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,  
78 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and  
79 other written statements with the federal government, any other state, any of the political  
80 subdivisions of another state, or any political subdivision of this state, except as limited by  
81 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal  
82 government grant substantially similar privileges to this state.

83 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
84 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,  
85 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the  
86 identity and other information of taxpayers who have failed to file tax returns or to pay any tax  
87 due.

88 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and  
89 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as  
90 requested by the executive secretary, any records, returns, or other information filed with the  
91 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5  
92 regarding the environmental assurance program participation fee.

93 (e) Notwithstanding Subsection (1), at the request of any person the commission shall  
94 provide that person sales and purchase volume data reported to the commission on a report,  
95 return, or other information filed with the commission under:

- 96 (i) Chapter 13, Part 2, Motor Fuel; or
- 97 (ii) Chapter 13, Part 4, Aviation Fuel.

98 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,  
99 as defined in Section 59-22-202, the commission shall report to the manufacturer:

100 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
101 manufacturer and reported to the commission for the previous calendar year under Section  
102 59-14-407; and

103 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
104 manufacturer for which a tax refund was granted during the previous calendar year under  
105 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

106 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,  
107 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited  
108 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

109 (h) Notwithstanding Subsection (1), the commission may:

110 (i) provide to the Division of Consumer Protection within the Department of  
111 Commerce and the attorney general data:

- 112 (A) reported to the commission under Section 59-14-212; or
- 113 (B) related to a violation under Section 59-14-211; and

114 (ii) upon request provide to any person data reported to the commission under  
115 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

116 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee  
117 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning  
118 and Budget, provide to the committee or office the total amount of revenues collected by the

119 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period  
120 specified by the committee or office.

121 (j) Notwithstanding Subsection (1), the commission shall at the request of the  
122 Legislature provide to the Legislature the total amount of sales or uses exempt under  
123 Subsection 59-12-104(46) reported to the commission in accordance with Section 59-12-105.

124 (k) Notwithstanding Subsection (1), the commission shall make the directory required  
125 by Section 59-14-603 available for public inspection.

126 (l) Notwithstanding Subsection (1), the commission may share information with  
127 federal, state, or local agencies as provided in Subsection 59-14-606(3).

128 (m) (i) Notwithstanding Subsection (1), the commission shall provide the Office of  
129 Recovery Services within the Department of Human Services any relevant information  
130 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer  
131 who has become obligated to the Office of Recovery Services.

132 (ii) The information described in Subsection (3)(m)(i) may be provided by the Office  
133 of Recovery Services to any other state's child support collection agency involved in enforcing  
134 that support obligation.

135 (n) (i) Notwithstanding Subsection (1), upon request from the state court administrator,  
136 the commission shall provide to the state court administrator, the name, address, telephone  
137 number, county of residence, and Social Security number on resident returns filed under  
138 Chapter 10, Individual Income Tax Act.

139 (ii) The state court administrator may use the information described in Subsection  
140 (3)(n)(i) only as a source list for the master jury list described in Section 78B-1-106.

141 (o) Notwithstanding Subsection (1), the commission shall at the request of a  
142 committee, commission, or task force of the Legislature provide to the committee, commission,  
143 or task force of the Legislature any information relating to a tax imposed under Chapter 9,  
144 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

145 (p) (i) As used in this Subsection (3)(p), "office" means the:

146 (A) Office of the Legislative Fiscal Analyst; or

147 (B) Office of Legislative Research and General Counsel.

148 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(p)(iii),  
149 the commission shall at the request of an office provide to the office all information:

- 150 (A) gained by the commission; and
- 151 (B) required to be attached to or included in returns filed with the commission.
- 152 (iii) (A) An office may not request and the commission may not provide to an office a
- 153 person's:
- 154 (I) address;
- 155 (II) name;
- 156 (III) Social Security number; or
- 157 (IV) taxpayer identification number.
- 158 (B) The commission shall in all instances protect the privacy of a person as required by
- 159 Subsection (3)(p)(iii)(A).
- 160 (iv) An office may provide information received from the commission in accordance
- 161 with this Subsection (3)(p) only:
- 162 (A) as:
- 163 (I) a fiscal estimate;
- 164 (II) fiscal note information; or
- 165 (III) statistical information; and
- 166 (B) if the information is classified to prevent the identification of a particular return.
- 167 (v) (A) A person may not request information from an office under Title 63G, Chapter
- 168 2, Government Records Access and Management Act, or this section, if that office received the
- 169 information from the commission in accordance with this Subsection (3)(p).
- 170 (B) An office may not provide to a person that requests information in accordance with
- 171 Subsection (3)(p)(v)(A) any information other than the information the office provides in
- 172 accordance with Subsection (3)(p)(iv).
- 173 (q) Notwithstanding Subsection (1), the commission may provide to the governing
- 174 board of the agreement or a taxing official of another state, the District of Columbia, the United
- 175 States, or a territory of the United States:
- 176 (i) the following relating to an agreement sales and use tax:
- 177 (A) information contained in a return filed with the commission;
- 178 (B) information contained in a report filed with the commission;
- 179 (C) a schedule related to Subsection (3)(q)(i)(A) or (B); or
- 180 (D) a document filed with the commission; or

181 (ii) a report of an audit or investigation made with respect to an agreement sales and  
182 use tax.

183 (r) Notwithstanding Subsection (1), the commission may provide to the Utah  
184 Educational Savings Plan Trust information related to a resident or nonresident individual's  
185 contribution to a Utah Educational Savings Plan account as designated on the resident or  
186 nonresident's individual income tax return under Section 59-10-1313.

187 (4) (a) Reports and returns shall be preserved for at least three years.

188 (b) After the three-year period provided in Subsection (4)(a) the commission may  
189 destroy a report or return.

190 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

191 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,  
192 the person shall be dismissed from office and be disqualified from holding public office in this  
193 state for a period of five years thereafter.

194 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in  
195 accordance with Subsection (3)(p)(iii) or a person that requests information in accordance with  
196 Subsection (3)(p)(v):

197 (i) is not guilty of a class A misdemeanor; and

198 (ii) is not subject to:

199 (A) dismissal from office in accordance with Subsection (5)(b); or

200 (B) disqualification from holding public office in accordance with Subsection (5)(b).

201 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

202 Section 2. Section **59-10-1025** is enacted to read:

203 **59-10-1025. Nonrefundable higher education tuition credit.**

204 (1) As used in this section:

205 (a) "Eligible institution" means ~~§~~ :

205a (i) ~~←§~~ an institution within the state system of higher

206 education specified in Section 53B-1-102 ~~§~~ [:] ; or

206a (ii) a private, degree granting college or university in the state accredited by the:

206b (A) Accrediting Council for Independent Colleges and Schools;

206c (B) North Central Association of Colleges and Schools The Higher Learning

206d Commission; or

206e (C) Northwest Commission on Colleges and Universities. ~~←§~~

207 (b) "Qualified tuition expenses" mean tuition and mandatory fees, less:

208 (i) refunds; and

209 (ii) amounts received from scholarships, grants, stipends, or similar forms of financial  
210 aid that are not subject to repayment.

211 (2) (a) For taxable years beginning on or after January 1, 2009, a claimant may claim a

212 nonrefundable tax credit equal to the amount of the qualified tuition expenses paid:  
213 (i) (A) by the claimant; or  
214 (B) by another person on behalf of the claimant;  
215 (ii) in the taxable year; and  
216 (iii) for the claimant's enrollment at an eligible institution.  
217 (b) The amount of the nonrefundable tax credit claimed under Subsection (2)(a) may  
218 not exceed 5% of the claimant's tax liability before tax credits under this chapter.  
219 (c) If the nonrefundable tax credit allowed under this section exceeds 5% of the  
220 claimant's tax liability before tax credits under this chapter, the claimant may carry forward the  
221 excess amount to future taxable years.  
222 (d) The sum of the nonrefundable tax credit claimed under Subsection (2)(a) and any  
223 excess amount carried forward pursuant to Subsection (2)(c) may not exceed 5% of the  
224 claimant's tax liability before tax credits under this chapter.  
225 (e) A claimant who qualifies for a nonrefundable tax credit under this section shall, at  
226 the request of the commission:  
227 (i) identify to the commission the eligible institution or institutions where the claimant  
228 was enrolled; and  
229 (ii) provide written authorization for the eligible institution to release to the  
230 commission information regarding the claimant's tuition and related expenses, including  
231 scholarships and grants, that the institution is required to file under federal law for the purpose  
232 of the claimant claiming a federal tax credit.  
233 (3) Upon request of the commission, the eligible institution shall release the  
234 information specified in Subsection (2)(e)(ii) to the commission for a claimant that claims a tax  
235 credit under this section.  
236 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
237 the commission shall make rules that:  
238 (i) establish procedures for a claimant to claim a nonrefundable tax credit under this  
239 section; and  
240 (ii) define "tuition and mandatory fees" and "scholarships, grants, stipends, or similar  
241 forms of financial aid received but not subject to repayment" for the purposes of this section.  
242 (b) The commission shall define "tuition and mandatory fees" to include the same types



243 of expenses for which a taxpayer may claim a Hope credit or Lifetime Learning credit under  
244 federal law.

245 Section 3. Section **59-10-1303** is amended to read:

246 **59-10-1303. Contributions -- Amount -- Procedure for designating a contribution**  
247 **-- Joint return -- Contribution irrevocable.**

248 (1) A resident or nonresident individual that makes a contribution under this part, other  
249 than Section 59-10-1311 or Section 59-10-1313, may designate as the contribution any whole  
250 dollar amount of \$1 or more.

251 (2) If a resident or nonresident individual designating a contribution under this part  
252 other than Section 59-10-1311:

253 (a) is owed an individual income tax refund for the taxable year, the amount of the  
254 contribution under this part shall be deducted from the resident or nonresident individual's  
255 individual income tax refund; or

256 (b) is not owed an individual income tax refund for the taxable year, the resident or  
257 nonresident individual may remit a contribution under this part with the resident or nonresident  
258 individual's individual income tax return, except as provided in Section 59-10-1313.

259 (3) If a husband and wife file a single individual income tax return jointly, a  
260 contribution under this part, other than Section 59-10-1311, shall be a joint contribution.

261 (4) [~~A~~] Except as provided in Subsection 59-10-1313(3)(c), a contribution under this  
262 part is irrevocable for the taxable year for which the resident or nonresident individual makes  
263 the contribution.

264 Section 4. Section **59-10-1313** is enacted to read:

265 **59-10-1313. Contribution to a Utah Educational Savings Plan account.**

266 (1) (a) If a resident or nonresident individual is owed an individual income tax refund  
267 for the taxable year, the individual may designate on the resident or nonresident individual's  
268 income tax return a contribution to a Utah Educational Savings Plan account established under  
269 Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the amount of the  
270 entire individual income tax refund.

271 (b) If a resident or nonresident individual is not owed an individual income tax refund  
272 for the taxable year, the individual may not designate on the resident or nonresident's individual  
273 income tax return a contribution to a Utah Educational Savings Plan account.

274 (2) The commission shall send the contribution to the Utah Educational Savings Plan  
 275 Trust along with information requested by the Utah Educational Savings Plan Trust, including  
 276 the taxpayer's name, social security number, and address.

277 (3) (a) If the taxpayer owns a Utah Educational Savings Plan account, the Utah  
 278 Educational Savings Plan Trust shall deposit the contribution into the account.

279 (b) If the taxpayer owns more than one Utah Educational Savings Plan account, the  
 280 Utah Educational Savings Plan Trust shall allocate the contribution among the accounts in  
 281 equal amounts.

282 (c) (i) If the taxpayer does not own a Utah Educational Savings Plan account, the Utah  
 283 Educational Savings Plan Trust shall send the taxpayer an account agreement.

284 (ii) If the taxpayer does not sign and return the account agreement by the date specified  
 285 by the Utah Educational Savings Plan Trust ~~H→~~ [;

286 —(A)] , ~~←H~~ the Utah Educational Savings Plan Trust shall return the contribution to the  
 287 ~~H→~~ [commission] taxpayer ~~←H~~ without any interest or earnings ~~H→~~ [; and] .

288 [~~(B) the commission shall remit the taxpayer's individual income tax refund to the~~  
 289 ~~taxpayer.] ~~←H~~~~

290 (4) For the purpose of determining interest on an overpayment or refund under Section  
 291 59-1-402~~H→~~ [;

292 —(a)] , ~~←H~~ no interest accrues after the commission sends the contribution to the Utah  
 293 Educational Savings Plan Trust ~~H→~~ [; and] .

294 [~~(b) if the Utah Educational Savings Plan Trust returns a contribution to the commission~~  
 295 ~~pursuant to Subsection (3)(c)(ii)(A), the return of the contribution shall be considered the filing~~  
 296 ~~of a return under Subsection 59-1-402(4)(a).] ~~←H~~~~

297 Section 5. **Retrospective operation.**

298 This bill has retrospective operation for a taxable year beginning on or after January 1,  
 299 2009.

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**H.B. 35 1st Sub. (Buff) - Higher Education Tax Credit and Contribution**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill may reduce revenue to the Education Fund by \$2,200,000 in FY 2010 and by \$3,900,000 in FY 2011. The carry forward provisions of this bill will increase the total revenue loss annually. By FY 2035 the estimated revenue loss is \$461,000,000 per year.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Education Fund	\$0	\$0	\$0	\$0	(\$2,200,000)	(\$3,900,000)
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$2,200,000)</b>	<b>(\$3,900,000)</b>

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

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses, or local governments. Individuals who have paid college tuition could receive a credit over time equal to the full cost of tuition.

