

**Senator Wayne L. Niederhauser** proposes the following substitute bill:

**TAX CREDITS 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, modifies tax credits for certain aged persons or retirees, 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;
- ▶ 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;
- ▶ modifies tax credits for certain aged persons or retirees; 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:**



26 None

27 **Other Special Clauses:**

28 This bill has retrospective operation for a taxable year beginning on or after January 1,  
29 2009.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **59-1-403**, as last amended by Laws of Utah 2008, Chapters 3, 382, and 384

33 **59-10-1019**, as renumbered and amended by Laws of Utah 2008, Chapter 389

34 **59-10-1303**, as enacted by Laws of Utah 2008, Chapter 389

35 ENACTS:

36 **59-10-1025**, Utah Code Annotated 1953

37 **59-10-1313**, Utah Code Annotated 1953



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

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

41 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

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

44 (i) a tax commissioner;

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

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

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

51 (i) in accordance with judicial order;

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

53 (A) this title; or

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

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

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

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

62 (2) This section does not prohibit:

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

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

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

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

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

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

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

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

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

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

85 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
86 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,  
87 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the

88 identity and other information of taxpayers who have failed to file tax returns or to pay any tax  
89 due.

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

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

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

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

102 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
103 manufacturer and reported to the commission for the previous calendar year under Section  
104 59-14-407; and

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

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

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

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

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

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

118 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee

119 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning  
120 and Budget, provide to the committee or office the total amount of revenues collected by the  
121 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period  
122 specified by the committee or office.

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

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

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

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

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

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

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

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

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

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

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

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

152 (A) gained by the commission; and

153 (B) required to be attached to or included in returns filed with the commission.

154 (iii) (A) An office may not request and the commission may not provide to an office a  
155 person's:

156 (I) address;

157 (II) name;

158 (III) Social Security number; or

159 (IV) taxpayer identification number.

160 (B) The commission shall in all instances protect the privacy of a person as required by  
161 Subsection (3)(p)(iii)(A).

162 (iv) An office may provide information received from the commission in accordance  
163 with this Subsection (3)(p) only:

164 (A) as:

165 (I) a fiscal estimate;

166 (II) fiscal note information; or

167 (III) statistical information; and

168 (B) if the information is classified to prevent the identification of a particular return.

169 (v) (A) A person may not request information from an office under Title 63G, Chapter  
170 2, Government Records Access and Management Act, or this section, if that office received the  
171 information from the commission in accordance with this Subsection (3)(p).

172 (B) An office may not provide to a person that requests information in accordance with  
173 Subsection (3)(p)(v)(A) any information other than the information the office provides in  
174 accordance with Subsection (3)(p)(iv).

175 (q) Notwithstanding Subsection (1), the commission may provide to the governing  
176 board of the agreement or a taxing official of another state, the District of Columbia, the United  
177 States, or a territory of the United States:

178 (i) the following relating to an agreement sales and use tax:

179 (A) information contained in a return filed with the commission;

180 (B) information contained in a report filed with the commission;

- 181 (C) a schedule related to Subsection (3)(q)(i)(A) or (B); or  
 182 (D) a document filed with the commission; or  
 183 (ii) a report of an audit or investigation made with respect to an agreement sales and  
 184 use tax.

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

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

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

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

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

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

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

200 (ii) is not subject to:

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

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

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

204 Section 2. Section **59-10-1019** is amended to read:

205 **59-10-1019. Definitions -- Nonrefundable tax credits for an aged person or**  
 206 **retiree.**

207 (1) As used in this section:

208 (a) "Eligible [~~age 65 or older retiree~~] aged person" means a claimant, regardless of  
 209 whether that claimant is retired, who [~~:(i) is 65 years of age or older; and (ii)] was born on or  
 210 before December 31, [~~1952~~] 1943.~~

211 (b) (i) "Eligible retirement income" means income received by an eligible [~~under age~~

212 65] retiree as a pension or annuity if that pension or annuity is:

213 (A) paid to the eligible [~~under age 65~~] retiree or the surviving spouse of an eligible  
214 [~~under age 65~~] retiree; and

215 (B) (I) paid from an annuity contract purchased by an employer under a plan that meets  
216 the requirements of Section 404(a)(2), Internal Revenue Code;

217 (II) purchased by an employee under a plan that meets the requirements of Section 408,  
218 Internal Revenue Code; or

219 (III) paid by:

220 (Aa) the United States;

221 (Bb) a state or a political subdivision of a state; or

222 (Cc) the District of Columbia.

223 (ii) "Eligible retirement income" does not include amounts received by the spouse of a  
224 living eligible [~~under age 65~~] retiree because of the eligible [~~under age 65~~] retiree's having been  
225 employed in a community property state.

226 (c) "Eligible [~~under age 65~~] retiree" means a claimant, regardless of whether that  
227 claimant is retired, who:

228 [~~(i) is younger than 65 years of age;~~]

229 [~~(ii)~~] (i) was born on or after January 1, 1944 but on or before December 31, 1952; and

230 [~~(iii)~~] (ii) has eligible retirement income for the taxable year for which a tax credit is  
231 claimed under this section.

232 (d) "Head of household filing status" is as defined in Section 59-10-1018.

233 (e) "Joint filing status" is as defined in Section 59-10-1018.

234 (f) "Married filing separately status" means a married individual who:

235 (i) does not file a single federal individual income tax return jointly with that married  
236 individual's spouse for the taxable year; and

237 (ii) files a single federal individual income tax return for the taxable year.

238 (g) "Modified adjusted gross income" means the sum of an eligible [~~age 65 or older~~  
239 ~~retiree's~~] aged person's or eligible [~~under age 65~~] retiree's:

240 (i) adjusted gross income for the taxable year for which a tax credit is claimed under  
241 this section;

242 (ii) any interest income that is not included in adjusted gross income for the taxable



243 year described in Subsection (1)(g)(i); and

244 (iii) any addition to adjusted gross income required by Section 59-10-114 for the  
245 taxable year described in Subsection (1)(g)(i).

246 (h) "Single filing status" means a single individual who files a single federal individual  
247 income tax return for the taxable year.

248 (2) Except as provided in Section 59-10-1002.2 and subject to Subsections (3) through  
249 (6):

250 (a) each eligible [~~age 65 or older retiree~~] aged person may claim a nonrefundable tax  
251 credit of [~~\$450~~] \$409 against taxes otherwise due under this part; or

252 (b) each eligible [~~under age 65~~] retiree may claim a nonrefundable tax credit against  
253 taxes otherwise due under this part in an amount equal to the lesser of:

254 (i) \$288; or

255 (ii) the product of:

256 (A) the eligible [~~under age 65~~] retiree's eligible retirement income for the taxable year  
257 for which the eligible [~~under age 65~~] retiree claims a tax credit under this section; and

258 (B) 6%.

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

260 (4) The sum of the tax credits allowed by Subsection (2) claimed on one return filed  
261 under this part shall be reduced by \$.025 for each dollar by which modified adjusted gross  
262 income for purposes of the return exceeds:

263 (a) for a federal individual income tax return that is allowed a married filing separately  
264 status, \$16,000;

265 (b) for a federal individual income tax return that is allowed a single filing status,  
266 \$25,000;

267 (c) for a federal individual income tax return that is allowed a head of household filing  
268 status, \$32,000; or

269 (d) for a return under this chapter that is allowed a joint filing status, \$32,000.

270 (5) For purposes of determining the ownership of items of retirement income under this  
271 section, common law doctrine shall be applied in all cases even though some items of  
272 retirement income may have originated from service or investments in a community property  
273 state.

274 Section 3. Section **59-10-1025** is enacted to read:  
275 **59-10-1025. Nonrefundable higher education tuition credit.**  
276 (1) As used in this section:  
277 (a) "Eligible institution" means:  
278 (i) an institution within the state system of higher education specified in Section  
279 53B-1-102; or  
280 (ii) a private, degree granting college or university in the state accredited by the:  
281 (A) Accrediting Council for Independent Colleges and Schools;  
282 (B) North Central Association of Colleges and Schools The Higher Learning  
283 Commission; or  
284 (C) Northwest Commission on Colleges and Universities.  
285 (b) "Qualified tuition expenses" mean tuition and mandatory fees, less:  
286 (i) refunds;  
287 (ii) amounts received from scholarships, grants, stipends, or similar forms of financial  
288 aid that are not subject to repayment; and  
289 (iii) a federal tax credit claimed for tuition and related expenses for which a refundable  
290 tax credit is claimed under this section, if the federal tax credit is claimed by:  
291 (A) the person who claims a nonrefundable tax credit under this section; or  
292 (B) another person who paid the tuition and related expenses on behalf of the student.  
293 (2) (a) For taxable years beginning on or after January 1, 2009, a claimant may claim a  
294 nonrefundable tax credit equal to the amount of the qualified tuition expenses paid:  
295 (i) (A) by the claimant; or  
296 (B) by another person on behalf of the claimant;  
297 (ii) in the taxable year; and  
298 (iii) for the claimant's enrollment at an eligible institution.  
299 (b) The amount of the nonrefundable tax credit claimed under Subsection (2)(a) may  
300 not exceed 5% of the claimant's tax liability before tax credits under this chapter.  
301 (c) If the nonrefundable tax credit allowed under this section exceeds 5% of the  
302 claimant's tax liability before tax credits under this chapter, the claimant may carry forward the  
303 excess amount to future taxable years.  
304 (d) The sum of the nonrefundable tax credit claimed under Subsection (2)(a) and any

305 excess amount carried forward pursuant to Subsection (2)(c) may not exceed 5% of the  
306 claimant's tax liability before tax credits under this chapter.

307 (e) A claimant who qualifies for a nonrefundable tax credit under this section shall, at  
308 the request of the commission:

309 (i) identify to the commission the eligible institution or institutions where the claimant  
310 was enrolled; and

311 (ii) provide written authorization for the eligible institution to release to the  
312 commission information regarding the claimant's tuition and related expenses, including  
313 scholarships and grants, that the institution is required to file under federal law for the purpose  
314 of the claimant claiming a federal tax credit.

315 (3) Upon request of the commission, the eligible institution shall release the  
316 information specified in Subsection (2)(e)(ii) to the commission for a claimant that claims a tax  
317 credit under this section.

318 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
319 the commission shall make rules that:

320 (i) establish procedures for a claimant to claim a nonrefundable tax credit under this  
321 section; and

322 (ii) define "tuition and mandatory fees" and "scholarships, grants, stipends, or similar  
323 forms of financial aid received but not subject to repayment" for the purposes of this section.

324 (b) The commission shall define "tuition and mandatory fees" to include the same types  
325 of expenses for which a taxpayer may claim a Hope credit or Lifetime Learning credit under  
326 federal law.

327 Section 4. Section **59-10-1303** is amended to read:

328 **59-10-1303. Contributions -- Amount -- Procedure for designating a contribution**  
329 **-- Joint return -- Contribution irrevocable.**

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

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

335 (a) is owed an individual income tax refund for the taxable year, the amount of the

336 contribution under this part shall be deducted from the resident or nonresident individual's  
337 individual income tax refund; or

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

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

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

346 Section 5. Section **59-10-1313** is enacted to read:

347 **59-10-1313. Contribution to a Utah Educational Savings Plan account.**

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

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

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

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

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

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

366 (ii) If the taxpayer does not sign and return the account agreement by the date specified

367 by the Utah Educational Savings Plan Trust, the Utah Educational Savings Plan Trust shall  
368 return the contribution to the taxpayer without any interest or earnings.

369 (4) For the purpose of determining interest on an overpayment or refund under Section  
370 59-1-402, no interest accrues after the commission sends the contribution to the Utah  
371 Educational Savings Plan Trust.

372 **Section 6. Retrospective operation.**

373 This bill has retrospective operation for a taxable year beginning on or after January 1,  
374 2009.