

AMENDMENTS TO INDIVIDUAL INCOME TAX
DEFINITION OF RESIDENT INDIVIDUAL

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Wayne A. Harper

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

General Description:

This bill amends the Individual Income Tax Act to modify the definition of resident individual.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of resident individual to address the circumstances under which an individual who is not domiciled in the state is a resident individual;
- ▶ grants rulemaking authority to the State Tax Commission; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for a taxable year beginning on or after January 1, 2010.

Utah Code Sections Affected:

AMENDS:

59-10-103, as last amended by Laws of Utah 2009, Chapter 312



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

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

59-10-103. Definitions.

(1) As used in this chapter:

(a) "Adjusted gross income":

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

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

(b) "Corporation" includes:

(i) an association;

(ii) a joint stock company; and

(iii) an insurance company.

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

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

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

(f) "Federal taxable income":

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

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

(g) "Fiduciary" means:

(i) a guardian;

(ii) a trustee;

(iii) an executor;

(iv) an administrator;

(v) a receiver;

(vi) a conservator; or

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

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

59 (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
60 homesteaded land that was held to have been diminished from the Uintah and Ouray
61 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

62 (j) "Individual" means a natural person and includes aliens and minors.

63 (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate
64 all or part of the trust without the consent of a person who has a substantial beneficial interest
65 in the trust and the interest would be adversely affected by the exercise of the settlor's power to
66 revoke or terminate all or part of the trust.

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

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

69 (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
70 resident estate or trust.

71 (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
72 unincorporated organization:

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

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

76 (I) a trust;

77 (II) an estate; or

78 (III) a corporation.

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

81 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
82 organization described in Subsection (1)(o)(i).

83 (p) "Qualified nongrantor charitable lead trust" means a trust:

84 (i) that is irrevocable;

85 (ii) that has a trust term measured by:

86 (A) a fixed term of years; or

87 (B) the life of a person living on the day on which the trust is created;

88 (iii) under which:

89 (A) a portion of the value of the trust assets is distributed during the trust term:

- 90 (I) to an organization described in Section 170(c), Internal Revenue Code; and
- 91 (II) as a:
 - 92 (Aa) guaranteed annuity interest; or
 - 93 (Bb) unitrust interest; and
 - 94 (B) assets remaining in the trust at the termination of the trust term are distributed to a
 - 95 beneficiary:
 - 96 (I) designated in the trust; and
 - 97 (II) that is not an organization described in Section 170(c), Internal Revenue Code;
 - 98 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue
 - 99 Code; and
 - 100 (v) under which the grantor of the trust is not treated as the owner of any portion of the
 - 101 trust for federal income tax purposes.
 - 102 (q) (i) "Resident individual" means:
 - 103 (A) an individual who is domiciled in this state for any period of time during the
 - 104 taxable year, but only for the duration of the period during which the individual is domiciled in
 - 105 this state; or
 - 106 (B) an individual who is not domiciled in this state but:
 - 107 (I) maintains a [permanent] place of abode in this state; and
 - 108 (II) spends in the aggregate 183 or more days of the taxable year in this state.
 - 109 [~~(ii) For purposes of Subsection (1)(q)(i)(B), a fraction of a calendar day shall be~~
 - 110 ~~counted as a whole day.~~]
 - 111 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
 - 112 and for purposes of Subsection (1)(q)(i)(B), the commission shall by rule define what
 - 113 constitutes spending a day of the taxable year in the state.
 - 114 (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.
 - 115 (s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.
 - 116 (t) "State income tax percentage for a nonresident estate or trust" means a percentage
 - 117 equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the
 - 118 nonresident estate's or trust's total adjusted gross income for that taxable year after making the
 - 119 adjustments required by:
 - 120 (i) Section 59-10-202;

- 121 (ii) Section 59-10-207;
- 122 (iii) Section 59-10-209.1; or
- 123 (iv) Section 59-10-210.
- 124 (u) "State income tax percentage for a nonresident individual" means a percentage
- 125 equal to a nonresident individual's state taxable income for the taxable year divided by the
- 126 difference between:
- 127 (i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross
- 128 income for that taxable year, after making the:
- 129 (A) additions and subtractions required by Section 59-10-114; and
- 130 (B) adjustments required by Section 59-10-115; and
- 131 (ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember,
- 132 the compensation the servicemember receives for military service if the servicemember is
- 133 serving in compliance with military orders.
- 134 (v) "State income tax percentage for a part-year resident individual" means, for a
- 135 taxable year, a fraction:
- 136 (i) the numerator of which is the sum of:
- 137 (A) subject to Section 59-10-1404.5, for the time period during the taxable year that the
- 138 part-year resident individual is a resident, the part-year resident individual's total adjusted gross
- 139 income for that time period, after making the:
- 140 (I) additions and subtractions required by Section 59-10-114; and
- 141 (II) adjustments required by Section 59-10-115; and
- 142 (B) for the time period during the taxable year that the part-year resident individual is a
- 143 nonresident, an amount calculated by:
- 144 (I) determining the part-year resident individual's adjusted gross income for that time
- 145 period, after making the:
- 146 (Aa) additions and subtractions required by Section 59-10-114; and
- 147 (Bb) adjustments required by Section 59-10-115; and
- 148 (II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I)
- 149 that is derived from Utah sources in accordance with Section 59-10-117; and
- 150 (ii) the denominator of which is the difference between:
- 151 (A) the part-year resident individual's total adjusted gross income for that taxable year,

152 after making the:

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

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

155 (B) if the part-year resident individual is a servicemember, any compensation the
156 servicemember receives for military service during the portion of the taxable year that the
157 servicemember is a nonresident if the servicemember is serving in compliance with military
158 orders.

159 (w) "Taxable income" or "state taxable income":

160 (i) subject to Section 59-10-1404.5, for a resident individual, means the resident
161 individual's adjusted gross income after making the:

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

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

164 (ii) for a nonresident individual, is an amount calculated by:

165 (A) determining the nonresident individual's adjusted gross income for the taxable
166 year, after making the:

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

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

169 (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A)
170 that is derived from Utah sources in accordance with Section 59-10-117;

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

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

173 (x) "Taxpayer" means any individual, estate, trust, or beneficiary of an estate or trust,
174 that has income subject in whole or part to the tax imposed by this chapter.

175 (y) "Trust term" means a time period:

176 (i) beginning on the day on which a qualified nongrantor charitable lead trust is
177 created; and

178 (ii) ending on the day on which the qualified nongrantor charitable lead trust described
179 in Subsection (1)(y)(i) terminates.

180 (z) "Uintah and Ouray Reservation" means the lands recognized as being included
181 within the Uintah and Ouray Reservation in:

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

- 183 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).
- 184 (aa) "Unadjusted income" means an amount equal to the difference between:
- 185 (i) the total income required to be reported by a resident or nonresident estate or trust
186 on the resident or nonresident estate's or trust's federal income tax return for estates and trusts
187 for the taxable year; and
- 188 (ii) the sum of the following:
- 189 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:
- 190 (I) for administering the resident or nonresident estate or trust; and
- 191 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or
192 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
193 year;
- 194 (B) the income distribution deduction that a resident or nonresident estate or trust
195 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or
196 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
197 year;
- 198 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for
199 estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as
200 allowed on the resident or nonresident estate's or trust's federal income tax return for estates
201 and trusts for the taxable year; and
- 202 (D) the amount that a resident or nonresident estate or trust deducts as a personal
203 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or
204 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
205 year.
- 206 (bb) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).
- 207 (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute
208 Indian Tribe of the Uintah and Ouray Reservation.
- 209 (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.
- 210 (ee) "Wages" is as defined in Section 59-10-401.
- 211 (2) (a) Any term used in this chapter has the same meaning as when used in
212 comparable context in the laws of the United States relating to federal income taxes unless a
213 different meaning is clearly required.

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

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

221 **Section 2. Retrospective operation.**

222 This bill has retrospective operation for a taxable year beginning on or after January 1,
223 2010.

Legislative Review Note
as of 11-20-09 6:29 AM

Office of Legislative Research and General Counsel