

Senator Todd Weiler proposes the following substitute bill:

**UTAH EDUCATIONAL SAVINGS PLAN AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Eric K. Hutchings

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**LONG TITLE**

**General Description:**

This bill amends tax deduction, contribution, and credit provisions related to Utah Educational Savings Plan accounts.

**Highlighted Provisions:**

This bill:

- ▶ modifies tax deduction and credit provisions related to Utah Educational Savings Plan accounts;
- ▶ modifies tax return contribution provisions related to Utah Educational Savings Plan accounts; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides for retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**59-7-106**, as last amended by Laws of Utah 2014, Chapter 273



26 [59-10-1017](#), as last amended by Laws of Utah 2010, Chapter 6  
27 [59-10-1313](#), as last amended by Laws of Utah 2011, Chapter 46



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

30 Section 1. Section **59-7-106** is amended to read:

31 **59-7-106. Subtractions from unadjusted income.**

32 (1) In computing adjusted income the following amounts shall be subtracted from  
33 unadjusted income:

34 (a) the foreign dividend gross-up included in gross income for federal income tax  
35 purposes under Section 78, Internal Revenue Code;

36 (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the  
37 taxpayer elects to deduct the net capital loss on the return filed under this chapter for the  
38 taxable year for which the net capital loss is incurred;

39 (c) the decrease in salary expense deduction for federal income tax purposes due to  
40 claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

41 (d) the decrease in qualified research and basic research expense deduction for federal  
42 income tax purposes due to claiming the federal credit for increasing research activities under  
43 Section 41, Internal Revenue Code;

44 (e) the decrease in qualified clinical testing expense deduction for federal income tax  
45 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for  
46 rare diseases or conditions under Section 45C, Internal Revenue Code;

47 (f) any decrease in any expense deduction for federal income tax purposes due to  
48 claiming any other federal credit;

49 (g) the safe harbor lease adjustment required under Subsections [59-7-111\(1\)\(b\)](#) and  
50 (2)(b);

51 (h) any income on the federal corporation income tax return that has been previously  
52 taxed by Utah;

53 (i) an amount included in federal taxable income that is due to a refund of a tax,  
54 including a franchise tax, an income tax, a corporate stock and business tax, or an occupation  
55 tax:

56 (i) if that tax is imposed for the privilege of:

- 57 (A) doing business; or
- 58 (B) exercising a corporate franchise;
- 59 (ii) if that tax is paid by the corporation to:
- 60 (A) Utah;
- 61 (B) another state of the United States;
- 62 (C) a foreign country;
- 63 (D) a United States possession; or
- 64 (E) the Commonwealth of Puerto Rico; and
- 65 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;
- 66 (j) a charitable contribution, to the extent the charitable contribution is allowed as a
- 67 subtraction under Section 59-7-109;
- 68 (k) subject to Subsection (3), 50% of a dividend considered to be received or received
- 69 from a subsidiary that:
- 70 (i) is a member of the unitary group;
- 71 (ii) is organized or incorporated outside of the United States; and
- 72 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;
- 73 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a
- 74 foreign operating company;
- 75 (m) the amount of gain or loss that is included in unadjusted income but not recognized
- 76 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
- 77 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
- 78 with Section 338(h)(10), Internal Revenue Code;
- 79 (n) the amount of gain or loss that is included in unadjusted income but not recognized
- 80 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance
- 81 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
- 82 Revenue Code, has been made for federal purposes;
- 83 (o) subject to Subsection (5), an adjustment to the following due to a difference
- 84 between basis for federal purposes and basis as computed under Section 59-7-107:
- 85 (i) an amortization expense;
- 86 (ii) a depreciation expense;
- 87 (iii) a gain;

- 88 (iv) a loss; or
- 89 (v) an item similar to Subsections (1)(o)(i) through (iv);
- 90 (p) an interest expense that is not deducted on a federal corporation income tax return
- 91 under Section 265(b) or 291(e), Internal Revenue Code;
- 92 (q) 100% of dividends received from a subsidiary that is an insurance company if that
- 93 subsidiary that is an insurance company is:
  - 94 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
  - 95 (ii) under common ownership;
  - 96 (r) subject to Subsection 59-7-105(12), a corporation that is an account owner as
  - 97 defined in Section 53B-8a-102 shall subtract the amount of a qualified investment as defined in
  - 98 Section 53B-8a-102 [~~that~~]:
    - 99 (i) [~~a corporation that is an account owner as defined in Section 53B-8a-102~~] that the
    - 100 corporation or a person other than the corporation makes into an account owned by the
    - 101 corporation during the taxable year ;
    - 102 (ii) to the extent that neither the corporation nor the person other than the corporation
    - 103 described in Subsection (1)(r)(i) [~~does not deduct~~] deducts the qualified investment on a federal
    - 104 [~~corporation~~] income tax return; and
    - 105 (iii) to the extent the qualified investment does not exceed the maximum amount of the
    - 106 qualified investment that may be subtracted from unadjusted income for a taxable year in
    - 107 accordance with Subsection 53B-8a-106(1);
    - 108 (s) for purposes of income included in a combined report under Part 4, Combined
    - 109 Reporting, the entire amount of the dividends a member of a unitary group receives or is
    - 110 considered to receive from a captive real estate investment trust; and
    - 111 (t) the increase in income for federal income tax purposes due to claiming a:
      - 112 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or
      - 113 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code.
    - 114 (2) For purposes of Subsection (1)(b):
      - 115 (a) the subtraction shall be made by claiming the subtraction on a return filed:
        - 116 (i) under this chapter for the taxable year for which the net capital loss is incurred; and
        - 117 (ii) by the due date of the return, including extensions; and
        - 118 (b) a net capital loss for a taxable year shall be:

119 (i) subtracted for the taxable year for which the net capital loss is incurred; or  
120 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue  
121 Code.

122 (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a  
123 taxpayer shall first subtract from a dividend considered to be received or received an expense  
124 directly attributable to that dividend.

125 (b) For purposes of Subsection (3)(a), the amount of an interest expense that is  
126 considered to be directly attributable to a dividend is calculated by multiplying the interest  
127 expense by a fraction:

128 (i) the numerator of which is the taxpayer's average investment in the dividend paying  
129 subsidiaries; and

130 (ii) the denominator of which is the taxpayer's average total investment in assets.

131 (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in  
132 determining income apportionable to this state, a portion of the factors of a foreign subsidiary  
133 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the  
134 combined report factors as provided in this Subsection (3)(c).

135 (ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign  
136 subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be  
137 included in the combined report factors is calculated by multiplying each factor of the foreign  
138 subsidiary by a fraction:

139 (A) not to exceed 100%; and

140 (B) (I) the numerator of which is the amount of the dividend paid by the foreign  
141 subsidiary that is included in adjusted income; and

142 (II) the denominator of which is the current year earnings and profits of the foreign  
143 subsidiary as determined under the Internal Revenue Code.

144 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under  
145 Subsection (1)(l):

146 (i) if the taxpayer elects to file a worldwide combined report as provided in Section  
147 59-7-403; or

148 (ii) for the following:

149 (A) income generated from intangible property; or

150 (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is  
151 generated from an asset held for investment and not from a regular business trading activity.

152 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating  
153 company:

154 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

155 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a  
156 transaction that occurs between members of a unitary group.

157 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining  
158 income apportionable to this state, the factors for a foreign operating company shall be  
159 included in the combined report factors in the same percentages as the foreign operating  
160 company's adjusted income is included in the combined adjusted income.

161 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
162 commission may by rule define what constitutes:

163 (i) income generated from intangible property; or

164 (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is  
165 generated from an asset held for investment and not from a regular business trading activity.

166 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of  
167 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax  
168 credit is claimed if:

169 (i) there is a reduction in federal basis for a federal tax credit; and

170 (ii) there is no corresponding tax credit allowed in this state.

171 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
172 commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)  
173 through (iv).

174 Section 2. Section **59-10-1017** is amended to read:

175 **59-10-1017. Utah Educational Savings Plan tax credit.**

176 (1) As used in this section:

177 (a) "Account owner" is as defined in Section [53B-8a-102](#).

178 (b) "Higher education costs" is as defined in Section [53B-8a-102](#).

179 (c) "Maximum amount of a qualified investment for the taxable year" means, for a  
180 taxable year, the product of 5% and:

181 (i) for a claimant, estate, or trust that is an account owner, if that claimant, estate, or  
 182 trust is other than husband and wife account owners who file a single return jointly, the  
 183 maximum amount of a qualified investment:

184 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

185 (B) increased or kept for that taxable year in accordance with Subsections  
 186 53B-8a-106(1)(f) and (g); or

187 (ii) for claimants who are husband and wife account owners who file a single return  
 188 jointly, the maximum amount of a qualified investment:

189 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

190 (B) increased or kept for that taxable year in accordance with Subsections  
 191 53B-8a-106(1)(f) and (g).

192 (d) "Qualified investment" is as defined in Section 53B-8a-102.

193 (2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of  
 194 this section, a claimant, estate, or trust that is an account owner may claim a nonrefundable tax  
 195 credit equal to the product of:

196 [~~(a) the lesser of:~~]

197 [~~(i)~~] (a) the amount of a qualified investment [the] made:

198 (i) during the taxable year; and

199 (ii) into an account owned by the claimant, estate, or trust[:]; and

200 [~~(A) makes during the taxable year; and]~~

201 [~~(B) does not deduct:]~~

202 (b) 5%.

203 (3) A claimant, estate, or trust, or a person other than the claimant, estate, or trust, may  
 204 make a qualified investment described in Subsection (2).

205 [~~(I) for a claimant, on the claimant's federal individual income tax return; or]~~

206 [~~(II) for an estate or trust, on the estate's or trust's federal income tax return for estates~~  
 207 ~~and trusts; or]~~

208 (4) A tax credit under this section may not be claimed with respect to any portion of a  
 209 qualified investment described in Subsection (2) that a claimant, estate, trust, or person  
 210 described in Subsection (3) deducts on a federal income tax return.

211 [~~(i)~~] (5) A tax credit under this section may not exceed the maximum amount of a

212 qualified investment for the taxable year [~~if the amount described in Subsection (2)(a)(i) is~~  
213 ~~greater than the maximum amount of a qualified investment for the taxable year; and~~].

214 [~~(b) 5%.~~]

215 [~~(3)~~] (6) A tax credit under this section may not be carried forward or carried back.

216 Section 3. Section **59-10-1313** is amended to read:

217 **59-10-1313. Contribution to a Utah Educational Savings Plan account.**

218 (1) (a) If a resident or nonresident individual is owed an individual income tax refund  
219 for the taxable year, the individual may designate on the resident or nonresident individual's  
220 income tax return a contribution to a Utah Educational Savings Plan account established under  
221 Title 53B, Chapter 8a, Utah Educational Savings Plan, [~~in the amount of the entire individual~~  
222 ~~income tax refund~~] as provided in this part.

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

226 (2) (a) The commission shall send the contribution to the Utah Educational Savings  
227 Plan along with the following information:

228 (i) the amount of the individual income tax refund; and

229 (ii) the taxpayer's:

230 (A) name;

231 (B) Social Security number or taxpayer identification number; and

232 (C) address.

233 (b) The commission shall provide the taxpayer's telephone number and number of  
234 dependents claimed, as requested, to the Utah Educational Savings Plan.

235 (c) If a contribution to a Utah Educational Savings Plan account is designated in a  
236 single individual income tax return filed jointly by a husband and wife, the commission shall  
237 send the information described under Subsection (2)(a) or (b) for both the husband and wife to  
238 the Utah Educational Savings Plan.

239 (3) (a) If the taxpayer owns a Utah Educational Savings Plan account, the Utah  
240 Educational Savings Plan shall deposit the contribution into the account.

241 (b) If the taxpayer owns more than one Utah Educational Savings Plan account, the  
242 Utah Educational Savings Plan shall allocate the contribution among the accounts in equal



243 amounts.

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

246 (ii) If the taxpayer does not sign and return the account agreement by the date specified  
247 by the Utah Educational Savings Plan, the Utah Educational Savings Plan shall return the  
248 contribution to the taxpayer without any interest or earnings.

249 (4) For the purpose of determining interest on an overpayment or refund under Section  
250 [59-1-402](#), no interest accrues after the commission sends the contribution to the Utah  
251 Educational Savings Plan.

252 Section 4. **Effective date -- Retrospective operation.**

253 (1) The actions affecting Sections [59-7-106](#) and [59-10-1017](#) have retrospective  
254 operation for a taxable year beginning on or after January 1, 2015.

255 (2) The actions affecting Section [59-10-1313](#) take effect for a taxable year beginning  
256 on or after January 1, 2016.