

1 **TAX EXEMPTION FOR MILITARY SURVIVOR BENEFITS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: Peter C. Knudson

6

7 **LONG TITLE**

8 **General Description:**

9 This bill exempts certain military survivor benefits from individual income tax.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines a term; and
- 13 ▶ exempts from income tax certain military survivor benefits.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 This bill provides a special effective date.

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **59-10-103**, as last amended by Laws of Utah 2010, Chapter 202

21 **59-10-114**, as last amended by Laws of Utah 2010, Chapter 6

22

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

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

25 **59-10-103. Definitions.**

26 (1) As used in this chapter:

27 (a) "Adjusted gross income":



28 (i) for a resident or nonresident individual, [~~is as~~] means the same as that term is
29 defined in Section 62, Internal Revenue Code; or

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

32 (b) "Corporation" includes:

33 (i) an association;

34 (ii) a joint stock company; and

35 (iii) an insurance company.

36 (c) "Distributable net income" [~~is as~~] means the same as that term is defined in Section
37 643, Internal Revenue Code.

38 (d) "Employee" [~~is as~~] means the same as that term is defined in Section 59-10-401.

39 (e) "Employer" [~~is as~~] means the same as that term is defined in Section 59-10-401.

40 (f) "Federal taxable income":

41 (i) for a resident or nonresident individual, means taxable income as defined by Section
42 63, Internal Revenue Code; or

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

45 (g) "Fiduciary" means:

46 (i) a guardian;

47 (ii) a trustee;

48 (iii) an executor;

49 (iv) an administrator;

50 (v) a receiver;

51 (vi) a conservator; or

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

53 (h) "Guaranteed annuity interest" [~~is as~~] means the same as that term is defined in 26
54 C.F.R. Sec. 1.170A-6(c)(2).

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

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

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

63 (l) "Military service" [~~is as~~] means the same as that term is defined in Pub. L. No.
64 108-189, Sec. 101.

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

66 (n) "Nonresident trust" or "nonresident estate" means a trust or estate [~~which~~] that is
67 not a resident estate or trust.

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

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

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

73 (I) a trust;

74 (II) an estate; or

75 (III) a corporation.

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

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

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

81 (i) that is irrevocable;

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

83 (A) a fixed term of years; or

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

85 (iii) under which:

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

87 (I) to an organization described in Section 170(c), Internal Revenue Code; and

88 (II) as a:

89 (Aa) guaranteed annuity interest; or

90 (Bb) unitrust interest; and
91 (B) assets remaining in the trust at the termination of the trust term are distributed to a
92 beneficiary:

93 (I) designated in the trust; and
94 (II) that is not an organization described in Section 170(c), Internal Revenue Code;
95 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue
96 Code; and
97 (v) under which the grantor of the trust is not treated as the owner of any portion of the
98 trust for federal income tax purposes.

99 (q) "Reserve components" means the same as that term is described in 10 U.S.C. Sec.
100 10101.

101 ~~(r)~~ (r) (i) "Resident individual" means:

102 (A) an individual who is domiciled in this state for any period of time during the
103 taxable year, but only for the duration of the period during which the individual is domiciled in
104 this state; or

105 (B) an individual who is not domiciled in this state but:

106 (I) maintains a place of abode in this state; and
107 (II) spends in the aggregate 183 or more days of the taxable year in this state.

108 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
109 and for purposes of Subsection (1)~~(r)~~(r)(i)(B), the commission shall by rule define what
110 constitutes spending a day of the taxable year in the state.

111 ~~(s)~~ (s) "Resident estate" or "resident trust" ~~[is-as]~~ means the same as that term is
112 defined in Section 75-7-103.

113 ~~(t)~~ (t) "Servicemember" ~~[is-as]~~ means the same as that term is defined in Pub. L. No.
114 108-189, Sec. 101.

115 ~~(u)~~ (u) "State income tax percentage for a nonresident estate or trust" means a
116 percentage equal to a nonresident estate's or trust's state taxable income for the taxable year
117 divided by the nonresident estate's or trust's total adjusted gross income for that taxable year
118 after making the adjustments required by:

119 (i) Section 59-10-202;
120 (ii) Section 59-10-207;

121 (iii) Section 59-10-209.1; or

122 (iv) Section 59-10-210.

123 ~~[(tt)]~~ (v) "State income tax percentage for a nonresident individual" means a percentage
124 equal to a nonresident individual's state taxable income for the taxable year divided by the
125 difference between:

126 (i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross
127 income for that taxable year, after making the:

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

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

130 (ii) if the nonresident individual described in Subsection (1)~~[(tt)]~~(v)(i) is a
131 servicemember, the compensation the servicemember receives for military service if the
132 servicemember is serving in compliance with military orders.

133 ~~[(vv)]~~ (w) "State income tax percentage for a part-year resident individual" means, for a
134 taxable year, a fraction:

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

136 (A) subject to Section 59-10-1404.5, for the time period during the taxable year that the
137 part-year resident individual is a resident, the part-year resident individual's total adjusted gross
138 income for that time period, after making the:

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

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

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

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

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

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

147 (II) calculating the portion of the amount determined under Subsection

148 (1)~~[(vv)]~~(w)(i)(B)(I) that is derived from Utah sources in accordance with Section 59-10-117;

149 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~~] (x) "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

170 (1)[~~w~~](x)(ii)(A) 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~~] (y) "Taxpayer" means any individual, estate, trust, or beneficiary of an estate or
174 trust, that has income subject in whole or part to the tax imposed by this chapter.

175 [~~y~~] (z) "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~~](z)(i) terminates.

180 [~~z~~] (aa) "Uintah and Ouray Reservation" means the lands recognized as being
181 included 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)~~] (bb) "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)~~] (cc) "Unitrust interest" [~~is as~~] means the same as that term is defined in 26
- 207 C.F.R. Sec. 1.170A-6(c)(2).
- 208 [~~(cc)~~] (dd) "Ute tribal member" means a person who is enrolled as a member of the Ute
- 209 Indian Tribe of the Uintah and Ouray Reservation.
- 210 [~~(dd)~~] (ee) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray
- 211 Reservation.
- 212 [~~(cc)~~] (ff) "Wages" [~~is as~~] means the same as that term is defined in Section [59-10-401](#).
- 213 (2) (a) Any term used in this chapter has the same meaning as when used in

214 comparable context in the laws of the United States relating to federal income taxes unless a
215 different meaning is clearly required.

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

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

223 Section 2. Section **59-10-114** is amended to read:

224 **59-10-114. Additions to and subtractions from adjusted gross income of an**
225 **individual.**

226 (1) There shall be added to adjusted gross income of a resident or nonresident
227 individual:

228 (a) a lump sum distribution that the taxpayer does not include in adjusted gross income
229 on the taxpayer's federal individual income tax return for the taxable year;

230 (b) the amount of a child's income calculated under Subsection (4) that:

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

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

235 (c) (i) a withdrawal from a medical care savings account and any penalty imposed for
236 the taxable year if:

237 (A) the resident or nonresident individual does not deduct the amounts on the resident
238 or nonresident individual's federal individual income tax return under Section 220, Internal
239 Revenue Code;

240 (B) the withdrawal is subject to Subsections [31A-32a-105\(1\)](#) and (2); and

241 (C) the withdrawal is:

242 (I) subtracted on a return the resident or nonresident individual files under this chapter
243 for a taxable year beginning on or before December 31, 2007; or

244 (II) used as the basis for a resident or nonresident individual to claim a tax credit under

245 Section 59-10-1021;

246 (ii) a disbursement required to be added to adjusted gross income in accordance with

247 Subsection 31A-32a-105(3); or

248 (iii) an amount required to be added to adjusted gross income in accordance with

249 Subsection 31A-32a-105(5)(c);

250 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,

251 from the account of a resident or nonresident individual who is an account owner as defined in

252 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount

253 withdrawn from the account of the resident or nonresident individual who is the account

254 owner:

255 (i) is not expended for:

256 (A) higher education costs as defined in Section 53B-8a-102; or

257 (B) a payment or distribution that qualifies as an exception to the additional tax for

258 distributions not used for educational expenses provided in Sections 529(c) and 530(d),

259 Internal Revenue Code; and

260 (ii) is:

261 (A) subtracted by the resident or nonresident individual:

262 (I) who is the account owner; and

263 (II) on the resident or nonresident individual's return filed under this chapter for a

264 taxable year beginning on or before December 31, 2007; or

265 (B) used as the basis for the resident or nonresident individual who is the account

266 owner to claim a tax credit under Section 59-10-1017;

267 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of

268 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other

269 evidences of indebtedness issued by one or more of the following entities:

270 (i) a state other than this state;

271 (ii) the District of Columbia;

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

273 (iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i) through

274 (iii);

275 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a

276 resident trust of income that was taxed at the trust level for federal tax purposes, but was
277 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);
278 (g) any distribution received by a resident beneficiary of a nonresident trust of
279 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
280 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
281 was not taxed at the trust level by any state, with undistributed distributable net income
282 considered to be distributed from the most recently accumulated undistributed distributable net
283 income; and
284 (h) any adoption expense:
285 (i) for which a resident or nonresident individual receives reimbursement from another
286 person; and
287 (ii) to the extent to which the resident or nonresident individual subtracts that adoption
288 expense:
289 (A) on a return filed under this chapter for a taxable year beginning on or before
290 December 31, 2007; or
291 (B) from federal taxable income on a federal individual income tax return.
292 (2) There shall be subtracted from adjusted gross income of a resident or nonresident
293 individual:
294 (a) the difference between:
295 (i) the interest or a dividend on an obligation or security of the United States or an
296 authority, commission, instrumentality, or possession of the United States, to the extent that
297 interest or dividend is:
298 (A) included in adjusted gross income for federal income tax purposes for the taxable
299 year; and
300 (B) exempt from state income taxes under the laws of the United States; and
301 (ii) any interest on indebtedness incurred or continued to purchase or carry the
302 obligation or security described in Subsection (2)(a)(i);
303 (b) for taxable years beginning on or after January 1, 2000, if the conditions of
304 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:
305 (i) during a time period that the Ute tribal member resides on homesteaded land
306 diminished from the Uintah and Ouray Reservation; and

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

308 (c) an amount received by a resident or nonresident individual or distribution received

309 by a resident or nonresident beneficiary of a resident trust:

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

311 (A) a state; or

312 (B) the District of Columbia; and

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

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

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

316 (d) the amount of a railroad retirement benefit:

317 (i) paid:

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

319 seq.;

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

321 (C) for the taxable year; and

322 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on

323 that resident or nonresident individual's federal individual income tax return for that taxable

324 year; ~~and~~

325 (e) an amount:

326 (i) received by an enrolled member of an American Indian tribe; and

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

328 part on that amount in accordance with:

329 (A) federal law;

330 (B) a treaty; or

331 (C) a final decision issued by a court of competent jurisdiction[-]; and

332 (f) the amount of survivor benefits paid by the federal government, in accordance with

333 10 U.S.C. Secs. 1447 to 1455, to the spouse, dependent children, or both the spouse and

334 dependent children of:

335 (i) a member of the armed forces or the reserve components who dies on active duty, or

336 (ii) a member of the reserve components who dies of a service-connected cause while

337 performing inactive duty training.

338 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:
339 (i) the taxpayer is a Ute tribal member; and
340 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
341 requirements of this Subsection (3).

342 (b) The agreement described in Subsection (3)(a):
343 (i) may not:
344 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
345 (B) provide a subtraction under this section greater than or different from the
346 subtraction described in Subsection (2)(b); or
347 (C) affect the power of the state to establish rates of taxation; and
348 (ii) shall:
349 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
350 (B) be in writing;
351 (C) be signed by:
352 (I) the governor; and
353 (II) the chair of the Business Committee of the Ute tribe;
354 (D) be conditioned on obtaining any approval required by federal law; and
355 (E) state the effective date of the agreement.

356 (c) (i) The governor shall report to the commission by no later than February 1 of each
357 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is
358 in effect.

359 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the
360 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or
361 after the January 1 following the termination of the agreement.

362 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,
363 Utah Administrative Rulemaking Act, the commission may make rules:

364 (i) for determining whether income is derived from a source within the Uintah and
365 Ouray Reservation; and

366 (ii) that are substantially similar to how adjusted gross income derived from Utah
367 sources is determined under Section [59-10-117](#).

368 (4) (a) For purposes of this Subsection (4), "Form 8814" means:

369 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
370 Interest and Dividends; or

371 (ii) (A) a form designated by the commission in accordance with Subsection
372 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal
373 individual income taxes the information contained on 2000 Form 8814 is reported on a form
374 other than Form 8814; and

375 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
376 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
377 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
378 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
379 8814.

380 (b) The amount of a child's income added to adjusted gross income under Subsection
381 (1)(b) is equal to the difference between:

382 (i) the lesser of:

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

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

385 (I) the child's taxable interest;

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

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

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

389 (5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences
390 of indebtedness issued by an entity described in Subsections (1)(e)(i) through (iv) may not be
391 added to adjusted gross income of a resident or nonresident individual if, as annually
392 determined by the commission:

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

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

399 (i) the entity; or

400 (ii) (A) the state in which the entity is located; or
401 (B) the District of Columbia, if the entity is located within the District of Columbia.
402 Section 3. **Effective date.**
403 This bill takes effect on January 1, 2017.

Legislative Review Note
Office of Legislative Research and General Counsel