

MILITARY SPOUSE INCOME TAX AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies the Individual Income Tax Act by amending provisions relating to individual income tax deductions for a military spouse.

Highlighted Provisions:

This bill:

- ▶ authorizes an individual income tax deduction from adjusted gross income for the amount of all income, including income apportioned to another state, of a nonmilitary spouse of an active duty military member in certain circumstances; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-10-114, as last amended by Laws of Utah 2017, Chapter 389

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

Section 1. Section **59-10-114** is amended to read:

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

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

30 individual:

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

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

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

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

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

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

43 (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

44 (C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a
45 return the resident or nonresident individual files under this chapter;

46 (ii) a disbursement required to be added to adjusted gross income in accordance with
47 Subsection 31A-32a-105(3); or

48 (iii) an amount required to be added to adjusted gross income in accordance with
49 Subsection 31A-32a-105(5)(c);

50 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
51 from the account of a resident or nonresident individual who is an account owner as defined in
52 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount
53 withdrawn from the account of the resident or nonresident individual who is the account
54 owner:

55 (i) is not expended for:

56 (A) higher education costs as defined in Section 53B-8a-102.5; or

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

58 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
59 Internal Revenue Code; and

60 (ii) is:

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

62 (I) who is the account owner; and

63 (II) on the resident or nonresident individual's return filed under this chapter for a
64 taxable year beginning on or before December 31, 2007; or

65 (B) used as the basis for the resident or nonresident individual who is the account
66 owner to claim a tax credit under Section 59-10-1017;

67 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of
68 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
69 evidences of indebtedness issued by one or more of the following entities:

70 (i) a state other than this state;

71 (ii) the District of Columbia;

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

73 (iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i) through
74 (iii);

75 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a
76 resident trust of income that was taxed at the trust level for federal tax purposes, but was
77 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

78 (g) any distribution received by a resident beneficiary of a nonresident trust of
79 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
80 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
81 was not taxed at the trust level by any state, with undistributed distributable net income
82 considered to be distributed from the most recently accumulated undistributed distributable net
83 income; and

84 (h) any adoption expense:

85 (i) for which a resident or nonresident individual receives reimbursement from another

86 person; and

87 (ii) to the extent to which the resident or nonresident individual subtracts that adoption
88 expense:

89 (A) on a return filed under this chapter for a taxable year beginning on or before
90 December 31, 2007; or

91 (B) from federal taxable income on a federal individual income tax return.

92 (2) There shall be subtracted from adjusted gross income of a resident or nonresident
93 individual:

94 (a) the difference between:

95 (i) the interest or a dividend on an obligation or security of the United States or an
96 authority, commission, instrumentality, or possession of the United States, to the extent that
97 interest or dividend is:

98 (A) included in adjusted gross income for federal income tax purposes for the taxable
99 year; and

100 (B) exempt from state income taxes under the laws of the United States; and

101 (ii) any interest on indebtedness incurred or continued to purchase or carry the
102 obligation or security described in Subsection (2)(a)(i);

103 (b) for taxable years beginning on or after January 1, 2000, if the conditions of
104 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

105 (i) during a time period that the Ute tribal member resides on homesteaded land
106 diminished from the Uintah and Ouray Reservation; and

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

108 (c) an amount received by a resident or nonresident individual or distribution received
109 by a resident or nonresident beneficiary of a resident trust:

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

111 (A) a state; or

112 (B) the District of Columbia; and

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

114 that taxable year on the federal individual income tax return of the resident or nonresident
115 individual or resident or nonresident beneficiary of a resident trust;

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

117 (i) paid:

118 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
119 seq.;

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

121 (C) for the taxable year; and

122 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
123 that resident or nonresident individual's federal individual income tax return for that taxable
124 year; [~~and~~]

125 (e) an amount:

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

127 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
128 part on that amount in accordance with:

129 (A) federal law;

130 (B) a treaty; or

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

132 (f) the amount of all income, including income apportioned to another state, of a
133 nonmilitary spouse of an active duty military member if:

134 (i) both the nonmilitary spouse and the active duty military member are nonresident
135 individuals;

136 (ii) the active duty military member is stationed in Utah;

137 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.
138 4001(a)(2); and

139 (iv) the income is included in adjusted gross income for federal income tax purposes
140 for the taxable year.

141 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:

- 142 (i) the taxpayer is a Ute tribal member; and
- 143 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
- 144 requirements of this Subsection (3).
- 145 (b) The agreement described in Subsection (3)(a):
- 146 (i) may not:
- 147 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 148 (B) provide a subtraction under this section greater than or different from the
- 149 subtraction described in Subsection (2)(b); or
- 150 (C) affect the power of the state to establish rates of taxation; and
- 151 (ii) shall:
- 152 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
- 153 (B) be in writing;
- 154 (C) be signed by:
- 155 (I) the governor; and
- 156 (II) the chair of the Business Committee of the Ute tribe;
- 157 (D) be conditioned on obtaining any approval required by federal law; and
- 158 (E) state the effective date of the agreement.
- 159 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 160 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is
- 161 in effect.
- 162 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the
- 163 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or
- 164 after the January 1 following the termination of the agreement.
- 165 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,
- 166 Utah Administrative Rulemaking Act, the commission may make rules:
- 167 (i) for determining whether income is derived from a source within the Uintah and
- 168 Ouray Reservation; and
- 169 (ii) that are substantially similar to how adjusted gross income derived from Utah

170 sources is determined under Section 59-10-117.

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

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

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

178 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
179 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
180 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
181 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
182 8814.

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

185 (i) the lesser of:

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

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

188 (I) the child's taxable interest;

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

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

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

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

196 (a) for an entity described in Subsection (1)(e)(i) or (ii), the entity and all of the
197 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on

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

- 202 (i) the entity; or
- 203 (ii) (A) the state in which the entity is located; or
- 204 (B) the District of Columbia, if the entity is located within the District of Columbia.

205 **Section 2. Retrospective operation.**

206 This bill has retrospective operation for a taxable year beginning on or after January 1,
207 2018.