

**INDIVIDUAL INCOME TAX ADDITION AND
DEDUCTION AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas V. Sagers

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 additions and deductions.

Highlighted Provisions:

This bill:

- amends an addition to adjusted gross income of an individual income taxpayer and an addition to unadjusted income of a resident or nonresident estate or trust for the interest on certain bonds, notes, or other evidences of indebtedness;

- amends a deduction from adjusted gross income of an individual income taxpayer and a deduction from unadjusted income of a resident or nonresident estate or trust for the interest on certain bonds, notes, or other obligations; 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

59-10-202, 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 individual:

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

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

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

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

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

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

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

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

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

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

(d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a resident or nonresident individual who is an account owner as defined in Section [53B-8a-102](#), for the taxable year for which the amount is withdrawn, if that amount

58 withdrawn from the account of the resident or nonresident individual who is the account
59 owner:

60 (i) is not expended for:

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

62 (B) a payment or distribution that qualifies as an exception to the additional tax for
63 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
64 Internal Revenue Code; and

65 (ii) is:

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

67 (I) who is the account owner; and

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

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

72 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of
73 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
74 evidences of indebtedness;

75 (i) issued by one or more of the following entities:

76 [(i)] (A) a state other than this state;

77 [(ii)] (B) the District of Columbia;

78 [(iii)] (C) a political subdivision of a state other than this state; or

79 [(iv)] (D) an agency or instrumentality of an entity described in Subsections
80 (1)(e)(i)(A) through [(iii)] (C); and

81 (ii) to the extent the interest is not included in adjusted gross income on the taxpayer's
82 federal income tax return for the taxable year;

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

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

(h) any adoption expense:

(i) for which a resident or nonresident individual receives reimbursement from another person; and

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

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

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

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

(a) the difference between:

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

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

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

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

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

(i) during a time period that the Ute tribal member resides on homesteaded land

diminished from the Uintah and Ouray Reservation; and

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

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

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

(A) a state; or

(B) the District of Columbia; and

(ii) to the extent that amount or distribution is included in adjusted gross income for that taxable year on the federal individual income tax return of the resident or nonresident individual or resident or nonresident beneficiary of a resident trust;

(d) the amount of a railroad retirement benefit:

(i) paid:

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

(B) to a resident or nonresident individual; and

(C) for the taxable year; and

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

(e) an amount:

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

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

(A) federal law;

(B) a treaty; or

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

(f) an amount received:

(i) for the interest on a bond, note, or other obligation issued by an entity for which

state statute provides an exemption of interest on its bonds from state individual income tax;

(ii) by a resident or nonresident individual;

(iii) for the taxable year; and

(iv) to the extent the amount is included in adjusted gross income on the taxpayer's federal income tax return for the taxable year.

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

(i) the taxpayer is a Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (3).

(b) The agreement described in Subsection (3)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(b); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(b);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

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

(ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or

after the January 1 following the termination of the agreement.

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

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

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

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

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

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

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

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

(i) the lesser of:

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

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

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

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

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

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

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

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

(i) the entity; or

(ii) (A) the state in which the entity is located; or

(B) the District of Columbia, if the entity is located within the District of Columbia.

Section 2. Section **59-10-202** is amended to read:

59-10-202. Additions to and subtractions from unadjusted income of a resident or nonresident estate or trust.

(1) There shall be added to unadjusted income of a resident or nonresident estate or trust:

(a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in determining adjusted gross income;

(b) except as provided in Subsection (3), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness:

(i) issued by one or more of the following entities:

~~[(i)]~~ (A) a state other than this state;

~~[(ii)]~~ (B) the District of Columbia;

~~[(iii)]~~ (C) a political subdivision of a state other than this state; or

226 ~~[(iv)]~~ (D) an agency or instrumentality of an entity described in Subsections
227 (1)(b)(i)(A) through ~~[(iii)]~~ (C); and
228 (ii) to the extent the interest is not included in federal taxable income on the taxpayer's
229 federal income tax return for the taxable year;
230 (c) any portion of federal taxable income for a taxable year if that federal taxable
231 income is derived from stock:
232 (i) in an S corporation; and
233 (ii) that is held by an electing small business trust;
234 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
235 from the account of a resident or nonresident estate or trust that is an account owner as defined
236 in Section [53B-8a-102](#), for the taxable year for which the amount is withdrawn, if that amount
237 withdrawn from the account of the resident or nonresident estate or trust that is the account
238 owner:
239 (i) is not expended for:
240 (A) higher education costs as defined in Section [53B-8a-102.5](#); or
241 (B) a payment or distribution that qualifies as an exception to the additional tax for
242 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
243 Internal Revenue Code; and
244 (ii) is:
245 (A) subtracted by the resident or nonresident estate or trust:
246 (I) that is the account owner; and
247 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a
248 taxable year beginning on or before December 31, 2007; or
249 (B) used as the basis for the resident or nonresident estate or trust that is the account
250 owner to claim a tax credit under Section [59-10-1017](#); and
251 (e) any fiduciary adjustments required by Section [59-10-210](#).
252 (2) There shall be subtracted from unadjusted income of a resident or nonresident
253 estate or trust:

(a) the interest or a dividend on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent that interest or dividend is included in gross income for federal income tax purposes for the taxable year but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) income of an irrevocable resident trust if:

(i) the income would not be treated as state taxable income derived from Utah sources under Section 59-10-204 if received by a nonresident trust;

(ii) the trust first became a resident trust on or after January 1, 2004;

(iii) no assets of the trust were held, at any time after January 1, 2003, in another resident irrevocable trust created by the same settlor or the spouse of the same settlor;

(iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

(v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the settlor or any other person is treated as an owner of any portion of the trust under Subtitle A, Subchapter J, Subpart E of the Internal Revenue Code; and

(vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on indebtedness incurred or continued to purchase or carry the assets generating the income described in this Subsection (2)(b), and by any expenses incurred in the production of income described in this Subsection (2)(b), to the extent that those expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or nonresident estate or trust derived from a deceased Ute tribal member:

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

282 (ii) from a source within the Uintah and Ouray Reservation;
283 (d) any amount:
284 (i) received by a resident or nonresident estate or trust;
285 (ii) that constitutes a refund of taxes imposed by:
286 (A) a state; or
287 (B) the District of Columbia; and
288 (iii) to the extent that amount is included in total income on that resident or nonresident
289 estate's or trust's federal tax return for estates and trusts for that taxable year;
290 (e) the amount of a railroad retirement benefit:
291 (i) paid:
292 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
293 seq.;
294 (B) to a resident or nonresident estate or trust derived from a deceased resident or
295 nonresident individual; and
296 (C) for the taxable year; and
297 (ii) to the extent that railroad retirement benefit is included in total income on that
298 resident or nonresident estate's or trust's federal tax return for estates and trusts;
299 (f) an amount:
300 (i) received by a resident or nonresident estate or trust if that amount is derived from a
301 deceased enrolled member of an American Indian tribe; and
302 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
303 part on that amount in accordance with:
304 (A) federal law;
305 (B) a treaty; or
306 (C) a final decision issued by a court of competent jurisdiction;
307 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section
308 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the
309 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for

the taxable year; ~~and~~

(h) any fiduciary adjustments required by Section 59-10-210~~[-]; and~~

(i) an amount received:

(i) for the interest on a bond, note, or other obligation issued by an entity for which state statute provides an exemption of interest on its bonds from state individual income tax;

(ii) by a resident or nonresident estate or trust;

(iii) for the taxable year; and

(iv) to the extent the amount is included in federal taxable income on the taxpayer's federal income tax return for the taxable year.

(3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(b)(i)(A) through ~~(iv)~~ (D) may not be added to unadjusted income of a resident or nonresident estate or trust if, as annually determined by the commission:

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

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

(i) the entity; or

(ii) (A) the state in which the entity is located; or

(B) the District of Columbia, if the entity is located within the District of Columbia.

(4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:

(i) the income is derived from a deceased Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).

(b) The agreement described in Subsection (4)(a):

(i) may not:

338 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
339 (B) provide a subtraction under this section greater than or different from the
340 subtraction described in Subsection (2)(c); or
341 (C) affect the power of the state to establish rates of taxation; and
342 (ii) shall:
343 (A) provide for the implementation of the subtraction described in Subsection (2)(c);
344 (B) be in writing;
345 (C) be signed by:
346 (I) the governor; and
347 (II) the chair of the Business Committee of the Ute tribe;
348 (D) be conditioned on obtaining any approval required by federal law; and
349 (E) state the effective date of the agreement.
350 (c) (i) The governor shall report to the commission by no later than February 1 of each
351 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
352 in effect.
353 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
354 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or
355 after the January 1 following the termination of the agreement.
356 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,
357 Utah Administrative Rulemaking Act, the commission may make rules:
358 (i) for determining whether income is derived from a source within the Uintah and
359 Ouray Reservation; and
360 (ii) that are substantially similar to how adjusted gross income derived from Utah
361 sources is determined under Section 59-10-117.
362 **Section 3. Retrospective operation.**
363 This bill has retrospective operation for a taxable year beginning on or after January 1,
364 2018.