

**MILITARY SPOUSE INCOME TAX AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Howard A. Stephenson

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**LONG TITLE**

**Committee Note:**

The Revenue and Taxation Interim Committee recommended this bill.

**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

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



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

29 **59-10-114. Additions to and subtractions from adjusted gross income of an**  
30 **individual.**

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

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

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

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

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

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

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

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

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

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

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

52 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,  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54 Section [53B-8a-102](#), for the taxable year for which the amount is withdrawn, if that amount  
55 withdrawn from the account of the resident or nonresident individual who is the account  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

57 (i) is not expended for:

58 (A) higher education costs as defined in Section [53B-8a-102.5](#); or

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

62 (ii) is:

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

64 (I) who is the account owner; and

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

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

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

72 (i) a state other than this state;

73 (ii) the District of Columbia;

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

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

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

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

86 (h) any adoption expense:

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

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

90 expense:

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

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

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

96 (a) the difference between:

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

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

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

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

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

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

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

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

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

113 (A) a state; or

114 (B) the District of Columbia; and

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

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

119 (i) paid:

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

121 seq.;

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

123 (C) for the taxable year; and

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

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

126 year; [~~and~~]

127 (e) an amount:

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

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

130 part on that amount in accordance with:

131 (A) federal law;

132 (B) a treaty; or

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

134 (f) the amount of all income, including income apportioned to another state, of a

135 nonmilitary spouse of an active duty military member if:

136 (i) both the nonmilitary spouse and the active duty military member are nonresident

137 individuals;

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

139 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.

140 4001(a)(2); and

141 (iv) the income is included in adjusted gross income for federal income tax purposes

142 for the taxable year.

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

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

145 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the

146 requirements of this Subsection (3).

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

148 (i) may not:

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

150 (B) provide a subtraction under this section greater than or different from the

151 subtraction described in Subsection (2)(b); or

- 152 (C) affect the power of the state to establish rates of taxation; and
- 153 (ii) shall:
- 154 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
- 155 (B) be in writing;
- 156 (C) be signed by:
- 157 (I) the governor; and
- 158 (II) the chair of the Business Committee of the Ute tribe;
- 159 (D) be conditioned on obtaining any approval required by federal law; and
- 160 (E) state the effective date of the agreement.

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

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

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

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

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

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

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

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

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

183 taxes the information contained on 2000 Form 8814 is reported on a form other than Form  
184 8814.

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

187 (i) the lesser of:

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

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

190 (I) the child's taxable interest;

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

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

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

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

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

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

204 (i) the entity; or

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

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

207 Section 2. **Retrospective operation.**

208 This bill has retrospective operation for a taxable year beginning on or after January 1,  
209 2018.