

Senator Wayne A. Harper proposes the following substitute bill:

529 SAVINGS PLAN AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to 529 savings plans.

Highlighted Provisions:

This bill:

- ▶ permits the Utah Educational Savings Plan to use another related name for business;
- ▶ modifies the eligibility criteria for a beneficiary of the Student Prosperity Savings Program;
- ▶ requires a corporation that subtracts from unadjusted gross income or an individual, estate, or trust that claims a tax credit for a contribution to a 529 savings plan to add back to income any amount subtracted or used as a basis for claiming a tax credit that was expended for elementary or secondary education; 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 retrospective operation.

Utah Code Sections Affected:



26 AMENDS:

27 **53B-8a-103**, as last amended by Laws of Utah 2011, Chapters 46 and 342

28 **53B-8a-106**, as last amended by Laws of Utah 2015, Chapter 94

29 **53B-8a-201**, as enacted by Laws of Utah 2017, Chapter 389 and last amended by

30 Coordination Clause, Laws of Utah 2017, Chapter 382

31 **59-7-105**, as last amended by Laws of Utah 2017, Chapter 389

32 **59-7-106**, as last amended by Laws of Utah 2017, Chapter 389

33 **59-10-114**, as last amended by Laws of Utah 2017, Chapter 389

34 **59-10-202**, as last amended by Laws of Utah 2017, Chapter 389

35 **59-10-1017**, as last amended by Laws of Utah 2017, Chapter 389



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

38 Section 1. Section **53B-8a-103** is amended to read:

39 **53B-8a-103. Creation of Utah Educational Savings Plan -- Powers and duties of**
40 **plan -- Certain exemptions.**

41 (1) There is created the Utah Educational Savings Plan, which may also be known and
42 [~~function as~~] do business as:

43 (a) the Utah Educational Savings Plan Trust[:]; or

44 (b) another related name.

45 (2) The plan:

46 (a) is a non-profit, self-supporting agency that administers a public trust;

47 (b) shall administer the various programs, funds, trusts, plans, functions, duties, and
48 obligations assigned to the plan:

49 (i) consistent with sound fiduciary principles; and

50 (ii) subject to review of the board; and

51 (c) shall be known as and managed as a qualified tuition program in compliance with
52 Section 529, Internal Revenue Code, that is sponsored by the state.

53 (3) The plan may:

54 (a) make and enter into contracts necessary for the administration of the plan payable
55 from plan money, including:

56 (i) contracts for goods and services; and

- 57 (ii) contracts to engage personnel, with demonstrated ability or expertise, including
58 consultants, actuaries, managers, counsel, and auditors for the purpose of rendering
59 professional, managerial, and technical assistance and advice;
- 60 (b) adopt a corporate seal and change and amend [~~it from time to time~~] the corporate
61 seal;
- 62 (c) invest money within the program, administrative, and endowment funds in
63 accordance with the provisions under Section 53B-8a-107;
- 64 (d) enter into agreements with account owners, any institution of higher education, any
65 federal or state agency, or other entity as required to implement this chapter;
- 66 (e) solicit and accept any grants, gifts, legislative appropriations, and other money from
67 the state, any unit of federal, state, or local government, or any other person, firm, partnership,
68 or corporation for deposit to the administrative fund, endowment fund, or the program fund;
- 69 (f) make provision for the payment of costs of administration and operation of the plan;
- 70 (g) carry out studies and projections [~~in order~~]
71 (i) present and estimated future higher education costs; and
72 (ii) levels of financial participation in the plan required [~~in order~~]
73 owners to achieve their educational funding objective;
- 74 (h) participate in federal, state, local governmental, or private programs;
- 75 (i) create public and private partnerships, including investment or management
76 relationships with other 529 plans or entities;
- 77 (j) promulgate, impose, and collect administrative fees and charges in connection with
78 transactions of the plan, and provide for reasonable service charges;
- 79 (k) procure insurance:
80 (i) against any loss in connection with the property, assets, or activities of the plan; and
81 (ii) indemnifying any member of the board from personal loss or accountability arising
82 from liability resulting from a member's action or inaction as a member of the plan's board;
- 83 (l) administer outreach efforts to:
84 (i) market and publicize the plan and [~~its~~] the plan's products to existing and
85 prospective account owners; and
86 (ii) encourage economically challenged populations to save for post-secondary
87 education;

88 (m) adopt, trademark, and copyright names and materials for use in marketing and
89 publicizing the plan and [its] the plan's products;

90 (n) administer the funds of the plan;

91 (o) sue and be sued in [its] the plan's own name;

92 (p) own institutional accounts in the plan to establish and administer:

93 (i) scholarship programs; or

94 (ii) other college savings incentive programs, including programs designed to enhance
95 the savings of low income account owners investing in the plan; and

96 (q) have and exercise any other powers or duties that are necessary or appropriate to
97 carry out and effectuate the purposes of this chapter.

98 (4) (a) Except as provided in Subsection (4)(b), the plan is exempt from the provisions
99 of Title 63G, Chapter 2, Government Records Access and Management Act.

100 (b) (i) The annual audited financial statements of the plan described in Section
101 [53B-8a-111](#) are public records.

102 (ii) Financial information that is provided by the plan to the Division of Finance and
103 posted on the Utah Public Finance Website in accordance with Section [63A-3-402](#) is a public
104 record.

105 Section 2. Section **53B-8a-106** is amended to read:

106 **53B-8a-106. Account agreements.**

107 The plan may enter into [~~account agreements with account owners on behalf of~~
108 ~~beneficiaries~~] an account agreement with an account owner on behalf of one or more
109 beneficiaries under the following terms and agreements:

110 (1) (a) An account agreement may require an account owner to agree to invest a
111 specific amount of money in the plan for a specific period of time for the benefit of a specific
112 beneficiary, not to exceed an amount determined by the executive director.

113 (b) Account agreements may be amended to provide for adjusted levels of payments
114 based upon changed circumstances or changes in educational plans.

115 (c) An account owner may make additional optional payments as long as the total
116 payments for a specific beneficiary do not exceed the total estimated higher education costs as
117 determined by the executive director.

118 [~~(d) Subject to Subsections (1)(f) and (g)~~]

119 (2) (a) Subject to other provisions of this Subsection (2), the maximum amount of a
 120 qualified investment that a corporation that is an account owner may subtract from unadjusted
 121 income for a taxable year in accordance with Title 59, Chapter 7, Corporate Franchise and
 122 Income Taxes, is [~~\$1,710~~] \$1,960 for each individual beneficiary [~~for the taxable year~~
 123 ~~beginning on or after January 1, 2010, but beginning on or before December 31, 2010~~].

124 [~~(e) Subject to Subsections (1)(f) and (g)~~]

125 (b) Subject to other provisions of this Subsection (2), the maximum amount of a
 126 qualified investment that [~~may be used~~] an account owner may use as the basis for claiming a
 127 tax credit in accordance with Section 59-10-1017[~~;~~] is \$1,960 for each individual beneficiary if
 128 the account owner is:

129 [~~(i) subject to Subsection (1)(e)(iv), for a resident or nonresident estate or trust that is~~
 130 ~~an account owner, \$1,710 for each individual beneficiary for the taxable year beginning on or~~
 131 ~~after January 1, 2010, but beginning on or before December 31, 2010;~~]

132 (i) a resident or nonresident estate or trust, other than a grantor trust;

133 [~~(ii) subject to Subsection (1)(e)(iv), for a resident or nonresident individual that is an~~
 134 ~~account owner, other than a husband and wife who are account owners and]~~

135 (ii) a resident or nonresident individual, other than married account owners who file a
 136 single return jointly under Title 59, Chapter 10, Individual Income Tax Act[~~, \$1,710 for each~~
 137 ~~individual beneficiary for the taxable year beginning on or after January 1, 2010, but beginning~~
 138 ~~on or before December 31, 2010]; or~~

139 (iii) a grantor trust and the owner of the grantor trust has a single filing status or a head
 140 of household filing status as defined in Section 59-10-1018.

141 (c) Subject to other provisions of this Subsection (2), the maximum amount of a
 142 qualified investment that an account owner may use as the basis for claiming a tax credit in
 143 accordance with Section 59-10-1017 is \$3,920 for each individual beneficiary if:

144 [~~(iii) subject to Subsection (1)(e)(iv), for a husband and wife who are account owners~~
 145 ~~and file]~~

146 (i) the account owner is married and files a single return jointly under Title 59, Chapter
 147 10, Individual Income Tax Act, [~~\$3,420 for each individual beneficiary;~~] regardless of whether
 148 the plan has entered into a separate agreement with one spouse or a single account agreement
 149 with both spouses jointly; or

150 ~~[(A) for the taxable year beginning on or after January 1, 2010, but beginning on or~~
151 ~~before December 31, 2010; and]~~

152 ~~[(B) regardless of whether the plan has entered into:]~~

153 ~~[(F) a separate account agreement with each spouse; or]~~

154 ~~[(H) a single account agreement with both spouses jointly; or]~~

155 ~~[(iv) for a grantor trust:]~~

156 ~~[(A) if the owner of the grantor trust has a single filing status or head of household~~
157 ~~filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(e)(ii);~~
158 ~~or]~~

159 ~~[(B)] (ii) [if] the account owner is a grantor trust and the owner of the grantor trust has~~
160 ~~a joint filing status as defined in Section 59-10-1018[, the amount described in Subsection~~
161 ~~(1)(e)(iii)].~~

162 (d) (i) The amounts described in Subsections (2)(a) through (c) are for a taxable year
163 beginning on or after January 1, 2018, but beginning on or before December 31, 2018.

164 ~~[(f)(i)] (ii) For ~~[taxable years]~~ a taxable year beginning on or after January 1, ~~[2011]~~~~
165 2019, the executive director shall annually increase the maximum amount of a qualified
166 investment described in Subsections ~~[(1)(d) and (1)(e)(i) and (ii)]~~ (2)(a) and (b) by a
167 percentage equal to the increase in the consumer price index for the preceding calendar year.

168 ~~[(ii)] (iii) After making an increase required by Subsection ~~[(1)(f)(i)]~~ (2)(d)(ii), the~~
169 executive director shall:

170 (A) round the maximum amount of the qualified ~~[investments]~~ investment described in
171 Subsections ~~[(1)(d) and (1)(e)(i) and (ii)]~~ (2)(a) and (b) increased under Subsection ~~[(1)(f)(i)]~~
172 (2)(d)(ii) to the nearest 10 dollar increment; and

173 (B) increase the maximum amount of the qualified investment described in Subsection
174 ~~[(1)(e)(iii)]~~ (2)(c) so that the maximum amount of the qualified investment described in
175 Subsection ~~[(1)(e)(iii) is equal to the product of: (f)]~~ (2)(c) is double the maximum amount of
176 the qualified investment described in Subsection ~~[(1)(e)(ii) as rounded under Subsection~~
177 ~~(1)(f)(ii)(A); and (H) two]~~ (2)(d)(iii)(A).

178 ~~[(iii)] (iv) For purposes of ~~[Subsections (1)(f)(i) and (ii)]~~ this Subsection (2)(d), the~~
179 executive director shall calculate the consumer price index as provided in Sections 1(f)(4) and
180 1(f)(5), Internal Revenue Code.

181 ~~[(g)]~~ (v) For ~~[taxable years]~~ a taxable year beginning on or after January 1, ~~[2011]~~
182 2019, the executive director shall keep the previous year's maximum amount of a qualified
183 investment described in Subsections ~~[(1)(d) and (1)(e)(i) and (ii)]~~ (2)(a) and (b) if the consumer
184 price index for the preceding calendar year decreases.

185 ~~[(2)(a) Beneficiaries designated in account agreements must be designated after]~~
186 (e) An account owner shall designate a beneficiary in an account agreement after the
187 beneficiary's birth and before age 19 ~~[for an account owner]~~ to:

188 (i) subtract a qualified investment from income under Title 59, Chapter 7, Corporate
189 Franchise and Income Taxes; or

190 (ii) use a qualified investment as the basis for claiming a tax credit in accordance with
191 Section 59-10-1017.

192 ~~[(b)]~~ (f) ~~[Account owners]~~ An account owner may designate a beneficiary age 19 or
193 older, but ~~[investments]~~ an investment for that beneficiary ~~[are]~~ is not eligible to be:

194 (i) subtracted from income under Title 59, Chapter 7, Corporate Franchise and Income
195 Taxes; or

196 (ii) used as the basis for claiming a tax credit in accordance with Section 59-10-1017.

197 (3) Each account agreement shall state clearly that there are no guarantees regarding
198 money in the plan as to the return of principal and that losses could occur.

199 (4) Each account agreement shall provide that:

200 (a) a contributor to, or designated beneficiary under, an account agreement may not
201 direct the investment of any contributions or earnings on contributions;

202 (b) any part of the money in any account may not be used as security for a loan; and

203 (c) an account owner may not borrow from the plan.

204 (5) The execution of an account agreement by the plan may not guarantee in any way
205 that higher education costs will be equal to projections and estimates provided by the plan or
206 that the beneficiary named in any account agreement will:

207 (a) be admitted to an institution of higher education;

208 (b) if admitted, be determined a resident for tuition purposes by the institution of
209 higher education;

210 (c) be allowed to continue attendance at the institution of higher education following
211 admission; or

212 (d) graduate from the institution of higher education.

213 (6) A beneficiary may be changed as permitted by the rules and regulations of the
214 board upon written request of the account owner prior to the date of admission of any
215 beneficiary under an account agreement by an institution of higher education so long as the
216 substitute beneficiary is eligible for participation.

217 (7) An account agreement may be freely amended throughout the term of the account
218 agreement in order to enable an account owner to increase or decrease the level of
219 participation, change the designation of beneficiaries, and carry out similar matters as
220 authorized by rule.

221 (8) Each account agreement shall provide that:

222 (a) the account agreement may be canceled upon the terms and conditions, and upon
223 payment of the fees and costs set forth and contained in the board's rules and regulations; and

224 (b) the executive director may amend the agreement unilaterally and retroactively, if
225 necessary, to maintain the plan as a qualified tuition program under Section 529, Internal
226 Revenue Code.

227 Section 3. Section **53B-8a-201** is amended to read:

228 **53B-8a-201. Definitions.**

229 As used in this part:

230 (1) "529 savings account" means a tax-advantaged method of saving for higher
231 education costs on behalf of a particular individual that:

232 (a) meets the requirements of Section 529, Internal Revenue Code; and

233 (b) is managed by the plan.

234 (2) "Child" means an individual less than 20 years of age.

235 (3) "Community partner" means a nonprofit organization that provide services to a
236 child who is economically disadvantaged or a family member, legal guardian, or legal
237 custodian of a child who is economically disadvantaged.

238 (4) "Donation" means a gift, grant, donation, or any other conveyance of money by a
239 person other than the Legislature that is not made directly for the benefit or on behalf of a
240 particular individual.

241 (5) "Economically disadvantaged" means that a child is:

242 (a) experiencing intergenerational poverty;

243 (b) a member or foster child of a family with an annual income at or below 185% of
244 the federal poverty level; ~~or~~

245 (c) living with a legal custodian or legal guardian with an annual family income at or
246 below 185% of the federal poverty level~~[-]; or~~

247 (d) living with a legal custodian or legal guardian who can attest that the child or the
248 child's household is receiving services benefitting low-income households or individuals.

249 (6) "Eligible individual" means an individual who:

250 (a) is at least 15 years of age and under 20 years of age;

251 (b) is a student in grade 10, grade 11, or grade 12 in Utah;

252 (c) is economically disadvantaged; and

253 (d) receives, or has a family member, a foster family member, or a legal custodian or
254 legal guardian who receives, services from a community partner.

255 (7) "Federal poverty level" means the poverty level as defined by the most recently
256 revised poverty income guidelines published by the United States Department of Health and
257 Human Services in the Federal Register.

258 (8) "Higher education costs" means the same as that term is defined in Section
259 [53B-8a-102.5](#), except that the expenses must be incurred at:

260 (a) a credit-granting institution of higher education within the state system of higher
261 education;

262 (b) a private, nonprofit college or university in the state that is accredited by the
263 Northwestern Association of Schools and Colleges; or

264 (c) a technical college.

265 (9) "Intergenerational poverty" means the same as that term is defined in Section
266 [35A-9-102](#).

267 (10) "Program" means the Student Prosperity Savings Program created in Section
268 [53B-8a-202](#).

269 Section 4. Section **59-7-105** is amended to read:

270 **59-7-105. Additions to unadjusted income.**

271 In computing adjusted income the following amounts shall be added to unadjusted
272 income:

273 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state

274 of the United States, including any agency and instrumentality of a state of the United States;

275 (2) the amount of any deduction taken on a corporation's federal return for taxes paid
276 by a corporation:

277 (a) to Utah for taxes imposed by this chapter; and

278 (b) to another state of the United States, a foreign country, a United States possession,
279 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or
280 exercising its corporate franchise, including income, franchise, corporate stock and business
281 and occupation taxes;

282 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and
283 (2)(a);

284 (4) capital losses that have been deducted on a Utah corporate return in previous years;

285 (5) any deduction on the federal return that has been previously deducted on the Utah
286 return;

287 (6) charitable contributions, to the extent deducted on the federal return when
288 determining federal taxable income;

289 (7) the amount of gain or loss determined under Section 59-7-114 relating to a target
290 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already
291 been included in the unadjusted income of the target corporation;

292 (8) the amount of gain or loss determined under Section 59-7-115 relating to
293 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
294 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
295 income of the target corporation;

296 (9) adjustments to gains, losses, depreciation expense, amortization expense, and
297 similar items due to a difference between basis for federal purposes and basis as computed
298 under Section 59-7-107;

299 (10) the amount withdrawn under Title 53B, Chapter 8a, Part 1, Utah Educational
300 Savings Plan, from the account of a corporation that is an account owner as defined in Section
301 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn
302 from the account of the corporation that is the account owner:

303 (a) (i) except as provided in Subsection (10)(a)(ii), is not expended for~~[(i)]~~ higher
304 education costs as defined in Section 53B-8a-102.5~~;~~ or ~~[(ii)]~~ a payment or distribution that

305 qualifies as an exception to the additional tax for distributions not used for educational
306 expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; [~~and~~] or
307 (ii) is or was expended for tuition in connection with enrollment or attendance at an
308 elementary or secondary public, private, or religious school; and
309 (b) is or was subtracted by the corporation:
310 (i) that is the account owner; and
311 (ii) in accordance with Subsection 59-7-106 (1)(r); and
312 (11) the amount of the deduction for dividends paid, as defined in Section 561, Internal
313 Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in
314 computing the taxable income of a captive real estate investment trust, if that captive real estate
315 investment trust is subject to federal income taxation.

316 Section 5. Section 59-7-106 is amended to read:

317 **59-7-106. Subtractions from unadjusted income.**

318 (1) In computing adjusted income, the following amounts shall be subtracted from
319 unadjusted income:

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

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

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

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

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

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

335 (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and

336 (2)(b);

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

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

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

343 (A) doing business; or

344 (B) exercising a corporate franchise;

345 (ii) if that tax is paid by the corporation to:

346 (A) Utah;

347 (B) another state of the United States;

348 (C) a foreign country;

349 (D) a United States possession; or

350 (E) the Commonwealth of Puerto Rico; and

351 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

352 (j) a charitable contribution, to the extent the charitable contribution is allowed as a
353 subtraction under Section 59-7-109;

354 (k) subject to Subsection (3), 50% of a dividend considered to be received or received
355 from a subsidiary that:

356 (i) is a member of the unitary group;

357 (ii) is organized or incorporated outside of the United States; and

358 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;

359 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a
360 foreign operating company;

361 (m) the amount of gain or loss that is included in unadjusted income but not recognized
362 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
363 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
364 with Section 338(h)(10), Internal Revenue Code;

365 (n) the amount of gain or loss that is included in unadjusted income but not recognized
366 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance

367 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
368 Revenue Code, has been made for federal purposes;

369 (o) subject to Subsection (5), an adjustment to the following due to a difference
370 between basis for federal purposes and basis as computed under Section 59-7-107:

371 (i) an amortization expense;

372 (ii) a depreciation expense;

373 (iii) a gain;

374 (iv) a loss; or

375 (v) an item similar to Subsections (1)(o)(i) through (iv);

376 (p) an interest expense that is not deducted on a federal corporation income tax return
377 under Section 265(b) or 291(e), Internal Revenue Code;

378 (q) 100% of dividends received from a subsidiary that is an insurance company if that
379 subsidiary that is an insurance company is:

380 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and

381 (ii) under common ownership;

382 (r) [~~subject to Subsection 59-7-105(10);~~] for a corporation that is an account owner as
383 defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section
384 53B-8a-102.5:

385 (i) that the corporation or a person other than the corporation makes into an account
386 owned by the corporation during the taxable year;

387 (ii) to the extent that neither the corporation nor the person other than the corporation
388 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax
389 return; and

390 (iii) to the extent the qualified investment does not exceed the maximum amount of the
391 qualified investment that may be subtracted from unadjusted income for a taxable year in
392 accordance with Subsection 53B-8a-106[~~(1)~~](2);

393 (s) for a corporation that makes a donation, as that term is defined in Section
394 53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the
395 amount of the donation to the extent that the corporation did not deduct the donation on a
396 federal income tax return;

397 (t) for purposes of income included in a combined report under Part 4, Combined

398 Reporting, the entire amount of the dividends a member of a unitary group receives or is
399 considered to receive from a captive real estate investment trust; and

400 (u) the increase in income for federal income tax purposes due to claiming a:

401 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

402 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code.

403 (2) For purposes of Subsection (1)(b):

404 (a) the subtraction shall be made by claiming the subtraction on a return filed:

405 (i) under this chapter for the taxable year for which the net capital loss is incurred; and

406 (ii) by the due date of the return, including extensions; and

407 (b) a net capital loss for a taxable year shall be:

408 (i) subtracted for the taxable year for which the net capital loss is incurred; or

409 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
410 Code.

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

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

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

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

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

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

428 (A) not to exceed 100%; and

- 429 (B) (I) the numerator of which is the amount of the dividend paid by the foreign
430 subsidiary that is included in adjusted income; and
- 431 (II) the denominator of which is the current year earnings and profits of the foreign
432 subsidiary as determined under the Internal Revenue Code.
- 433 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under
434 Subsection (1)(l):
- 435 (i) if the taxpayer elects to file a worldwide combined report as provided in Section
436 59-7-403; or
- 437 (ii) for the following:
- 438 (A) income generated from intangible property; or
- 439 (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is
440 generated from an asset held for investment and not from a regular business trading activity.
- 441 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating
442 company:
- 443 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and
- 444 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a
445 transaction that occurs between members of a unitary group.
- 446 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining
447 income apportionable to this state, the factors for a foreign operating company shall be
448 included in the combined report factors in the same percentages as the foreign operating
449 company's adjusted income is included in the combined adjusted income.
- 450 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
451 commission may by rule define what constitutes:
- 452 (i) income generated from intangible property; or
- 453 (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is
454 generated from an asset held for investment and not from a regular business trading activity.
- 455 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of
456 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax
457 credit is claimed if:
- 458 (i) there is a reduction in federal basis for a federal tax credit; and
- 459 (ii) there is no corresponding tax credit allowed in this state.

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

463 Section 6. Section **59-10-114** is amended to read:

464 **59-10-114. Additions to and subtractions from adjusted gross income of an**
465 **individual.**

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

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

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

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

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

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

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

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

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

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

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

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

491 owner:

492 (i) (A) except as provided in Subsection (1)(d)(i)(B), is not expended for ~~[-(A)]~~ higher
493 education costs as defined in Section 53B-8a-102.5 ~~;~~ or ~~[(B)]~~ a payment or distribution that
494 qualifies as an exception to the additional tax for distributions not used for educational
495 expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; ~~and~~ or

496 ~~[(ii) is:]~~

497 ~~[(A) subtracted by the resident or nonresident individual:]~~

498 ~~[(F) who is the account owner; and]~~

499 ~~[(H) on the resident or nonresident individual's return filed under this chapter for a~~
500 ~~taxable year beginning on or before December 31, 2007; or]~~

501 (B) is or was expended for tuition in connection with enrollment or attendance at an
502 elementary or secondary public, private, or religious school; and

503 ~~[(B)]~~ (ii) is or was used as the basis for the resident or nonresident individual who is
504 the account owner to claim a tax credit under Section 59-10-1017;

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

508 (i) a state other than this state;

509 (ii) the District of Columbia;

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

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

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

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

522 (h) any adoption expense:
523 (i) for which a resident or nonresident individual receives reimbursement from another
524 person; and
525 (ii) to the extent to which the resident or nonresident individual subtracts that adoption
526 expense~~[(A) on a return filed under this chapter for a taxable year beginning on or before~~
527 ~~December 31, 2007; or (B)]~~ from federal taxable income on a federal individual income tax
528 return.

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

531 (a) the difference between:

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

535 (A) included in adjusted gross income for federal income tax purposes for the taxable
536 year; and
537 (B) exempt from state income taxes under the laws of the United States; and
538 (ii) any interest on indebtedness incurred or continued to purchase or carry the
539 obligation or security described in Subsection (2)(a)(i);

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

542 (i) during a time period that the Ute tribal member resides on homesteaded land
543 diminished from the Uintah and Ouray Reservation; and
544 (ii) from a source within the Uintah and Ouray Reservation;

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

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

548 (A) a state; or
549 (B) the District of Columbia; and
550 (ii) to the extent that amount or distribution is included in adjusted gross income for
551 that taxable year on the federal individual income tax return of the resident or nonresident
552 individual or resident or nonresident beneficiary of a resident trust;

- 553 (d) the amount of a railroad retirement benefit:
554 (i) paid:
555 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
556 seq.;
- 557 (B) to a resident or nonresident individual; and
558 (C) for the taxable year; and
559 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
560 that resident or nonresident individual's federal individual income tax return for that taxable
561 year; and
- 562 (e) an amount:
563 (i) received by an enrolled member of an American Indian tribe; and
564 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
565 part on that amount in accordance with:
- 566 (A) federal law;
567 (B) a treaty; or
568 (C) a final decision issued by a court of competent jurisdiction.
- 569 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:
570 (i) the taxpayer is a Ute tribal member; and
571 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
572 requirements of this Subsection (3).
- 573 (b) The agreement described in Subsection (3)(a):
574 (i) may not:
575 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
576 (B) provide a subtraction under this section greater than or different from the
577 subtraction described in Subsection (2)(b); or
578 (C) affect the power of the state to establish rates of taxation; and
579 (ii) shall:
580 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
581 (B) be in writing;
582 (C) be signed by:
583 (I) the governor; and

584 (II) the chair of the Business Committee of the Ute tribe;
585 (D) be conditioned on obtaining any approval required by federal law; and
586 (E) state the effective date of the agreement.

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

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

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

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

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

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

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

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

606 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
607 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
608 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
609 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
610 8814.

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

613 (i) the lesser of:

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

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

616 (I) the child's taxable interest;

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

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

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

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

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

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

630 (i) the entity; or

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

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

633 Section 7. Section **59-10-202** is amended to read:

634 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**
635 **nonresident estate or trust.**

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

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

641 (b) except as provided in Subsection (3), for bonds, notes, and other evidences of
642 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
643 evidences of indebtedness issued by one or more of the following entities:

644 (i) a state other than this state;

645 (ii) the District of Columbia;

646 (iii) a political subdivision of a state other than this state; or
647 (iv) an agency or instrumentality of an entity described in Subsections (1)(b)(i) through
648 (iii);

649 (c) any portion of federal taxable income for a taxable year if that federal taxable
650 income is derived from stock:

651 (i) in an S corporation; and
652 (ii) that is held by an electing small business trust;

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

658 (i) (A) except as provided in Subsection (1)(d)(i)(B), is not expended for~~[(A)]~~ higher
659 education costs as defined in Section [53B-8a-102.5](#)~~;~~ or ~~[(B)]~~ a payment or distribution that
660 qualifies as an exception to the additional tax for distributions not used for educational
661 expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; ~~and~~ or
662 ~~[(ii) is:]~~
663 ~~[(A) subtracted by the resident or nonresident estate or trust:]~~
664 ~~[(F) that is the account owner, and]~~
665 ~~[(H) on the resident or nonresident estate's or trust's return filed under this chapter for a~~
666 ~~taxable year beginning on or before December 31, 2007; or]~~

667 (B) is or was expended for tuition in connection with enrollment or attendance at an
668 elementary or secondary public, private, or religious school; and

669 ~~[(B)]~~ (ii) is or was used as the basis for the resident or nonresident estate or trust that is
670 the account owner to claim a tax credit under Section [59-10-1017](#); and

671 (e) any fiduciary adjustments required by Section [59-10-210](#).

672 (2) There shall be subtracted from unadjusted income of a resident or nonresident
673 estate or trust:

674 (a) the interest or a dividend on obligations or securities of the United States and its
675 possessions or of any authority, commission, or instrumentality of the United States, to the
676 extent that interest or dividend is included in gross income for federal income tax purposes for

677 the taxable year but exempt from state income taxes under the laws of the United States, but
678 the amount subtracted under this Subsection (2) shall be reduced by any interest on
679 indebtedness incurred or continued to purchase or carry the obligations or securities described
680 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
681 income described in this Subsection (2) to the extent that such expenses, including amortizable
682 bond premiums, are deductible in determining federal taxable income;

683 (b) income of an irrevocable resident trust if:

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

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

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

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

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

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

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

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

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

703 (d) any amount:

704 (i) received by a resident or nonresident estate or trust;

705 (ii) that constitutes a refund of taxes imposed by:

706 (A) a state; or

707 (B) the District of Columbia; and

708 (iii) to the extent that amount is included in total income on that resident or nonresident
709 estate's or trust's federal tax return for estates and trusts for that taxable year;

710 (e) the amount of a railroad retirement benefit:

711 (i) paid:

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

714 (B) to a resident or nonresident estate or trust derived from a deceased resident or
715 nonresident individual; and

716 (C) for the taxable year; and

717 (ii) to the extent that railroad retirement benefit is included in total income on that
718 resident or nonresident estate's or trust's federal tax return for estates and trusts;

719 (f) an amount:

720 (i) received by a resident or nonresident estate or trust if that amount is derived from a
721 deceased enrolled member of an American Indian tribe; and

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

724 (A) federal law;

725 (B) a treaty; or

726 (C) a final decision issued by a court of competent jurisdiction;

727 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section
728 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the
729 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for
730 the taxable year; and

731 (h) any fiduciary adjustments required by Section [59-10-210](#).

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

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

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

742 (i) the entity; or

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

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

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

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

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

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

750 (i) may not:

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

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

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

755 (ii) shall:

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

757 (B) be in writing;

758 (C) be signed by[~~±~~] the governor and the chair of the Business Committee of the Ute

759 tribe;

760 [~~(F) the governor; and~~]

761 [~~(H) the chair of the Business Committee of the Ute tribe;~~]

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

763 (E) state the effective date of the agreement.

764 (c) (i) The governor shall report to the commission by no later than February 1 of each
 765 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
 766 in effect.

767 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
 768 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or
 769 after the January 1 following the termination of the agreement.

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

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

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

776 Section 8. Section 59-10-1017 is amended to read:

777 **59-10-1017. Utah Educational Savings Plan tax credit.**

778 (1) As used in this section:

779 (a) "Account owner" means the same as that term is defined in Section 53B-8a-102.

780 (b) "Grantor trust" means the same as that term is defined in Section 53B-8a-102.5.

781 (c) "Higher education costs" means the same as that term is defined in Section
782 53B-8a-102.5.

783 (d) "Maximum amount of a qualified investment for the taxable year" means, for a
784 taxable year, the product of 5% and:

785 (i) subject to Subsection (1)(d)(iii), for a claimant, estate, or trust that is an account
786 owner, if that claimant, estate, or trust is other than [~~husband and wife~~] married account owners
787 who file a single return jointly, the maximum amount of a qualified investment[:]
788 described in Subsection 53B-8a-106(2)(b);

789 [~~(A) listed in Subsection 53B-8a-106(1)(c)(ii); and~~]

790 [~~(B) increased or kept for that taxable year in accordance with Subsections~~
791 ~~53B-8a-106(1)(f) and (g);]~~

792 (ii) subject to Subsection (1)(d)(iii), for claimants who are [~~husband and wife~~] married
793 account owners who file a single return jointly, the maximum amount of a qualified
794 investment[:]
795 described in Subsection 53B-8a-106(2)(c); or

796 [~~(A) listed in Subsection 53B-8a-106(1)(c)(iii); and~~]

797 [~~(B) increased or kept for that taxable year in accordance with Subsections~~
798 ~~53B-8a-106(1)(f) and (g); or]~~

798 (iii) for a grantor trust:

799 (A) if the owner of the grantor trust has a single filing status or a head of household
800 filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(d)(i); or

801 (B) if the owner of the grantor trust has a joint filing status as defined in Section
802 [59-10-1018](#), the amount described in Subsection (1)(d)(ii).

803 (e) "Owner of the grantor trust" means the same as that term is defined in Section
804 [53B-8a-102.5](#).

805 (f) "Qualified investment" means the same as that term is defined in Section
806 [53B-8a-102.5](#).

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

810 (a) the amount of a qualified investment made:

811 (i) during the taxable year; and

812 (ii) into an account owned by the claimant, estate, or trust; and

813 (b) 5%.

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

816 (4) A claimant, estate, or trust that is an account owner may not claim a tax credit
817 under this section with respect to any portion of a qualified investment described in Subsection
818 (2) that a claimant, estate, trust, or person described in Subsection (3) deducts on a federal
819 income tax return.

820 (5) A tax credit under this section may not exceed the maximum amount of a qualified
821 investment for the taxable year.

822 (6) A claimant, estate, or trust that is an account owner may not carry forward or carry
823 back the tax credit under this section.

824 (7) A claimant, estate, or trust may claim a tax credit under this section in addition to
825 the tax credit described in Section [59-10-1017.1](#).

826 **Section 9. Retrospective operation and effective date.**

827 (1) Except as provided in Subsections (2) and (3), this bill has retrospective operation
828 for a taxable year beginning on or after January 1, 2018.

829 (2) The amendments to Sections [53B-8a-103](#) and [53B-8a-106](#) have retrospective
830 operation to January 1, 2018.

831 (3) The amendments to Section [53B-8a-201](#) take effect on May 8, 2018.