

## SB0209S01 compared with SB0209

~~{deleted text}~~ shows text that was in SB0209 but was deleted in SB0209S01.

Inserted text shows text that was not in SB0209 but was inserted into SB0209S01.

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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: \_\_\_\_\_

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#### 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;
- ▶ ~~{provides a limitation on the amount}~~requires a corporation ~~{may subtract}~~that subtracts from unadjusted gross income or an individual ~~{taxpayer may claim as}~~estate, or trust that claims a tax credit for ~~{contributions}~~a contribution to ~~{certain}~~a 529 savings ~~{plans when the account beneficiary is 16 years of age or younger}~~plan to add back to income any amount subtracted or used as a basis for

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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:

AMENDS:

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

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

**53B-8a-201**, as enacted by Laws of Utah 2017, Chapter 389 and last amended by  
Coordination Clause, Laws of Utah 2017, Chapter 382

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

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

**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

**59-10-1017**, 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:*

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

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

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

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

(b) another related name.

(2) The plan:

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

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

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- (i) consistent with sound fiduciary principles; and
  - (ii) subject to review of the board; and
  - (c) shall be known as and managed as a qualified tuition program in compliance with Section 529, Internal Revenue Code, that is sponsored by the state.
- (3) The plan may:
- (a) make and enter into contracts necessary for the administration of the plan payable from plan money, including:
    - (i) contracts for goods and services; and
    - (ii) contracts to engage personnel, with demonstrated ability or expertise, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice;
  - (b) adopt a corporate seal and change and amend [~~it from time to time~~] the corporate seal;
  - (c) invest money within the program, administrative, and endowment funds in accordance with the provisions under Section 53B-8a-107;
  - (d) enter into agreements with account owners, any institution of higher education, any federal or state agency, or other entity as required to implement this chapter;
  - (e) solicit and accept any grants, gifts, legislative appropriations, and other money from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation for deposit to the administrative fund, endowment fund, or the program fund;
  - (f) make provision for the payment of costs of administration and operation of the plan;
  - (g) carry out studies and projections [~~in order~~] to advise account owners regarding:
    - (i) present and estimated future higher education costs; and
    - (ii) levels of financial participation in the plan required [~~in order~~] to enable account owners to achieve their educational funding objective;
  - (h) participate in federal, state, local governmental, or private programs;
  - (i) create public and private partnerships, including investment or management relationships with other 529 plans or entities;
  - (j) promulgate, impose, and collect administrative fees and charges in connection with transactions of the plan, and provide for reasonable service charges;
  - (k) procure insurance:

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(i) against any loss in connection with the property, assets, or activities of the plan; and  
(ii) indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the plan's board;

(l) administer outreach efforts to:

(i) market and publicize the plan and [its] the plan's products to existing and prospective account owners; and

(ii) encourage economically challenged populations to save for post-secondary education;

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

(n) administer the funds of the plan;

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

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

(i) scholarship programs; or

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

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

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

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

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

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

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

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

(1) (a) An account agreement may require an account owner to agree to invest a

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specific amount of money in the plan for a specific period of time for the benefit of a specific beneficiary, not to exceed an amount determined by the executive director.

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

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

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

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

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

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

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

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

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

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

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

(c) Subject to other provisions of this Subsection (2), the maximum amount of a

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qualified investment that an account owner may use as the basis for claiming a tax credit in accordance with Section 59-10-1017 is \$3,920 for each individual beneficiary if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(2)(a) Beneficiaries designated in account agreements must be designated after]~~

(e) An account owner shall designate a beneficiary in an account agreement after the beneficiary's birth and before age 19 ~~[for an account owner]~~ to:

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

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

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

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

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

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

(4) Each account agreement shall provide that:

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

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

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

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

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

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

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

(d) graduate from the institution of higher education.

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

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

(8) Each account agreement shall provide that:

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

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

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

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

As used in this part:

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

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

(b) is managed by the plan.

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



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

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

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

(a) experiencing intergenerational poverty;

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

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

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

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

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

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

(c) is economically disadvantaged; and

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

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

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

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

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

(c) a technical college.

(9) "Intergenerational poverty" means the same as that term is defined in Section

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35A-9-102.

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

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

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

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

(1) interest from bonds, notes, and other evidences of indebtedness issued by any state of the United States, including any agency and instrumentality of a state of the United States;

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

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

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

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

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

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

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

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

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

(9) adjustments to gains, losses, depreciation expense, amortization expense, and

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similar items due to a difference between basis for federal purposes and basis as computed under Section 59-7-107;

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

(a) (i) except as provided in Subsection (10)(a)(ii), is not expended for ~~[(i)]~~ higher education costs as defined in Section 53B-8a-102.5 ~~[(i)]~~ or ~~[(ii)]~~ a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code: ~~[and] [(i)]~~, other than expenses ~~or~~

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

(b) is or was subtracted by the corporation:

(i) that is the account owner; and

(ii) in accordance with Subsection 59-7-106 (1)(r); and

(11) the amount of the deduction for dividends paid, as defined in Section 561, Internal Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in computing the taxable income of a captive real estate investment trust, if that captive real estate investment trust is subject to federal income taxation.

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

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

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

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

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

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

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

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

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

(g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and (2)(b);

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

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

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

(A) doing business; or

(B) exercising a corporate franchise;

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

(A) Utah;

(B) another state of the United States;

(C) a foreign country;

(D) a United States possession; or

(E) the Commonwealth of Puerto Rico; and

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

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

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

(i) is a member of the unitary group;

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

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

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

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

(n) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal Revenue Code, has been made for federal purposes;

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

(i) an amortization expense;

(ii) a depreciation expense;

(iii) a gain;

(iv) a loss; or

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

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

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

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

(ii) under common ownership;

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

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

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

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return; and

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

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

(t) for purposes of income included in a combined report under Part 4, Combined Reporting, the entire amount of the dividends a member of a unitary group receives or is considered to receive from a captive real estate investment trust; and

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

- (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or
- (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code.

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

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

- (i) under this chapter for the taxable year for which the net capital loss is incurred; and
- (ii) by the due date of the return, including extensions; and

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

- (i) subtracted for the taxable year for which the net capital loss is incurred; or
- (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue

Code.

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

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

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

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

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

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

(A) not to exceed 100%; and

(B) (I) the numerator of which is the amount of the dividend paid by the foreign subsidiary that is included in adjusted income; and

(II) the denominator of which is the current year earnings and profits of the foreign subsidiary as determined under the Internal Revenue Code.

(4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under Subsection (1)(l):

(i) if the taxpayer elects to file a worldwide combined report as provided in Section 59-7-403; or

(ii) for the following:

(A) income generated from intangible property; or

(B) a capital gain, dividend, interest, rent, royalty, or other similar item that is generated from an asset held for investment and not from a regular business trading activity.

(b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating company:

(i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

(ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a transaction that occurs between members of a unitary group.

(c) For purposes of the subtraction provided for in Subsection (1)(l), in determining income apportionable to this state, the factors for a foreign operating company shall be included in the combined report factors in the same percentages as the foreign operating company's adjusted income is included in the combined adjusted income.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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commission may by rule define what constitutes:

- (i) income generated from intangible property; or
- (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is

generated from an asset held for investment and not from a regular business trading activity.

(5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax credit is claimed if:

- (i) there is a reduction in federal basis for a federal tax credit; and
- (ii) there is no corresponding tax credit allowed in this state.

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

Section 6. 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



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

(i) (A) except as provided in Subsection (1)(d)(i)(B), is not expended for ~~[(A)]~~ higher education costs as defined in Section 53B-8a-102.5 ~~[(A)]~~ or ~~[(B)]~~ a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code ~~{, other than expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school}~~; ~~[and] or~~

~~[(ii) is:]~~

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

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

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

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

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

(e) except as provided in Subsection (5), 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 issued by one or more of the following entities:

(i) a state other than this state;

(ii) the District of Columbia;

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

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

(f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a resident trust of income that was taxed at the trust level for federal tax purposes, but was 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:

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(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.

(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).

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(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

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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) through (iv) 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) or (ii), 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) or (iv), 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 7. Section **59-10-202** is amended to read:

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

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### 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 issued by one or more of the following entities:

- (i) a state other than this state;
- (ii) the District of Columbia;
- (iii) a political subdivision of a state other than this state; or
- (iv) an agency or instrumentality of an entity described in Subsections (1)(b)(i) through (iii);

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

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

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

(i) (A) except as provided in Subsection (1)(d)(i)(B), is not expended for ~~[-;]~~  
~~\_\_\_\_\_~~ ~~}(A){}~~ higher education costs as defined in Section 53B-8a-102.5 ~~[-;]~~ or ~~[-;]~~  
~~\_\_\_\_\_~~ ~~}(B){}~~ a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code ~~{, other than expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school}~~; ~~[and] or~~

~~[(ii) is:]~~

~~[(A) subtracted by the resident or nonresident estate or trust:]~~

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~~[(f) that is the account owner, and]~~

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

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

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

(e) any fiduciary adjustments required by Section 59-10-210.

(2) There shall be subtracted from unadjusted income of a resident or nonresident 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

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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

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

(d) any amount:

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

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

(A) a state; or

(B) the District of Columbia; and

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

(e) 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 estate or trust derived from a deceased resident or nonresident individual; and

(C) for the taxable year; and

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

(f) an amount:

(i) received by a resident or nonresident estate or trust if that amount is derived from a deceased 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



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

(g) the amount that a qualified nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the 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.

(3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) 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) or (ii), 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) or (iv), 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:

(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)(c); 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)(c);

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(B) be in writing;

(C) be signed by[?] the governor and the chair of the Business Committee of the Ute tribe;

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

~~[(H) 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 (4) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(c) 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)(c) 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.

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

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

(1) As used in this section:

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

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

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

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

(i) subject to Subsection (1)(d)(iii), for a claimant, estate, or trust that is an account owner, if that claimant, estate, or trust is other than ~~[husband and wife]~~ married account owners who file a single return jointly, the maximum amount of a qualified investment[?] described in

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### Subsection 53B-8a-106(2)(b):

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

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

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

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

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

(iii) for a grantor trust:

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

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

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

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

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

(a) the amount of a qualified investment made:

(i) during the taxable year; and

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

(b) 5%.

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

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

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income tax return.

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

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

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

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

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

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

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

†

**Legislative Review Note**

**Office of Legislative Research and General Counsel†**