

1 **STUDENT PROSPERITY SAVINGS PROGRAM AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Steve Eliason**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **Committee Note:**

9 The Revenue and Taxation Interim Committee recommended this bill.

10 Legislative Vote: 18 voting for 1 voting against 0 absent

11 **General Description:**

12 This bill repeals income tax incentives related to the Student Prosperity Savings
13 Program.

14 **Highlighted Provisions:**

15 This bill:

16 ▶ repeals the corporate income tax deduction for a donation to the Student Prosperity
17 Savings Program;

18 ▶ repeals the individual income tax credit for a donation to the Student Prosperity
19 Savings Program;

20 ▶ eliminates a record retention requirement; and

21 ▶ makes technical and conforming changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill provides retrospective operation.

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **53B-8a-203**, as enacted by Laws of Utah 2017, Chapter 389

29 **59-7-106**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 15

30 **59-10-1017**, as last amended by Laws of Utah 2017, Chapter 389

31 **63I-2-259**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 12

32 REPEALS:

33 **59-10-1017.1**, as enacted by Laws of Utah 2017, Chapter 389



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

36 Section 1. Section **53B-8a-203** is amended to read:

37 **53B-8a-203. Donations to the program.**

38 (1) (a) A person may make a donation to the program by:

39 (i) sending the donation to the plan; and

40 (ii) including with the donation, direction that the donation benefit the program.

41 (b) A person making a donation shall include the person's name and mailing address

42 with the donation.

43 (2) (a) The plan shall mail a receipt to the person that makes the donation.

44 (b) The receipt described in Subsection (2)(a) shall state:

45 (i) the name of the person that made the donation;

46 (ii) the amount of the donation; and

47 (iii) the date on which the person makes the donation.

48 (c) The date on which the person makes a donation to the program is the date on which

49 the plan receives the donation, unless the plan receives the donation on a Saturday, a Sunday,

50 or a holiday, in which case the date on which the person makes the donation shall be the first

51 business day after the day on which the plan receives the donation.

52 ~~[(d) A person that receives a receipt described in Subsection (2)(a) shall retain the~~

53 ~~receipt for the same time period a person is required to keep books and records under Section~~

54 ~~59-1-1406.]~~

55 Section 2. Section **59-7-106** is amended to read:

56 **59-7-106. Subtractions from unadjusted income.**

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

58 unadjusted income:

- 59 (a) the foreign dividend gross-up included in gross income for federal income tax
60 purposes under Section 78, Internal Revenue Code;
- 61 (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the
62 taxpayer elects to deduct the net capital loss on the return filed under this chapter for the
63 taxable year for which the net capital loss is incurred;
- 64 (c) the decrease in salary expense deduction for federal income tax purposes due to
65 claiming the federal work opportunity credit under Section 51, Internal Revenue Code;
- 66 (d) the decrease in qualified research and basic research expense deduction for federal
67 income tax purposes due to claiming the federal credit for increasing research activities under
68 Section 41, Internal Revenue Code;
- 69 (e) the decrease in qualified clinical testing expense deduction for federal income tax
70 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for
71 rare diseases or conditions under Section 45C, Internal Revenue Code;
- 72 (f) any decrease in any expense deduction for federal income tax purposes due to
73 claiming any other federal credit;
- 74 (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and
75 (2)(b);
- 76 (h) any income on the federal corporation income tax return that has been previously
77 taxed by Utah;
- 78 (i) an amount included in federal taxable income that is due to a refund of a tax,
79 including a franchise tax, an income tax, a corporate stock and business tax, or an occupation
80 tax:
- 81 (i) if that tax is imposed for the privilege of:
- 82 (A) doing business; or
- 83 (B) exercising a corporate franchise;
- 84 (ii) if that tax is paid by the corporation to:
- 85 (A) Utah;
- 86 (B) another state of the United States;
- 87 (C) a foreign country;
- 88 (D) a United States possession; or
- 89 (E) the Commonwealth of Puerto Rico; and

- 90 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;
- 91 (j) a charitable contribution, to the extent the charitable contribution is allowed as a
- 92 subtraction under Section 59-7-109;
- 93 (k) subject to Subsection (3), 50% of a dividend considered to be received or received
- 94 from a subsidiary that:
 - 95 (i) is a member of the unitary group;
 - 96 (ii) is organized or incorporated outside of the United States; and
 - 97 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;
- 98 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a
- 99 foreign operating company;
- 100 (m) the amount of gain or loss that is included in unadjusted income but not recognized
- 101 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
- 102 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
- 103 with Section 338(h)(10), Internal Revenue Code;
- 104 (n) the amount of gain or loss that is included in unadjusted income but not recognized
- 105 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance
- 106 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
- 107 Revenue Code, has been made for federal purposes;
- 108 (o) subject to Subsection (5), an adjustment to the following due to a difference
- 109 between basis for federal purposes and basis as computed under Section 59-7-107:
 - 110 (i) an amortization expense;
 - 111 (ii) a depreciation expense;
 - 112 (iii) a gain;
 - 113 (iv) a loss; or
 - 114 (v) an item similar to Subsections (1)(o)(i) through (iv);
- 115 (p) an interest expense that is not deducted on a federal corporation income tax return
- 116 under Section 265(b) or 291(e), Internal Revenue Code;
- 117 (q) 100% of dividends received from a subsidiary that is an insurance company if that
- 118 subsidiary that is an insurance company is:
 - 119 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
 - 120 (ii) under common ownership;

121 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as
122 defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section
123 53B-8a-102.5:

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

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

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

132 ~~[(s) for a corporation that makes a donation, as that term is defined in Section~~
133 ~~53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the~~
134 ~~amount of the donation to the extent that the corporation did not deduct the donation on a~~
135 ~~federal income tax return;]~~

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

139 ~~[(u)]~~ (t) the increase in income for federal income tax purposes due to claiming a:

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

141 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code;

142 ~~[(v)]~~ (u) for a taxable year beginning on or after January 1, 2019, but beginning on or
143 before December 31, 2019, only:

144 (i) the amount of any FDIC premium paid or incurred by the taxpayer that is
145 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
146 Revenue Code, on the taxpayer's 2018 federal income tax return; plus

147 (ii) the amount of any FDIC premium paid or incurred by the taxpayer that is
148 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
149 Revenue Code, for the taxable year;

150 ~~[(w)]~~ (v) for a taxable year beginning on or after January 1, 2020, the amount of any
151 FDIC premium paid or incurred by the taxpayer that is disallowed as a deduction for federal

152 income tax purposes under Section 162(r), Internal Revenue Code, for the taxable year; and
153 ~~[(*)]~~ (w) for a taxable year beginning on or after January 1, 2020, but beginning on or
154 before December 31, 2020, the amount of:

155 (i) a paycheck protection loan similar to a loan forgiven in accordance with 15 U.S.C.
156 Sec. 636(a)(36) that is:

- 157 (A) authorized by the federal government;
- 158 (B) provided in response to COVID-19;
- 159 (C) forgiven if the borrower meets the expenditure requirements; and
- 160 (D) subject to federal income tax, to the extent that a deduction for the expenditures
161 paid with the loan is disallowed; and

162 (ii) any grant funds or forgiven loans that:

- 163 (A) the taxpayer receives from the state, a county within the state, or a municipality
164 within the state in response to COVID-19;
- 165 (B) are funded using federal revenue received by the state, the county, or the
166 municipality to respond to COVID-19; and
- 167 (C) are included in unadjusted income.

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

- 169 (a) the subtraction shall be made by claiming the subtraction on a return filed:
 - 170 (i) under this chapter for the taxable year for which the net capital loss is incurred; and
 - 171 (ii) by the due date of the return, including extensions; and
- 172 (b) a net capital loss for a taxable year shall be:
 - 173 (i) subtracted for the taxable year for which the net capital loss is incurred; or
 - 174 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
175 Code.

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

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

- 182 (i) the numerator of which is the taxpayer's average investment in the dividend paying

183 subsidiaries; and

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

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

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

193 (A) not to exceed 100%; and

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

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

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

200 (i) if the taxpayer elects to file a worldwide combined report as provided in Section
201 [59-7-403](#); or

202 (ii) for the following:

203 (A) income generated from intangible property; or

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

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

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

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

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

214 company's adjusted income is included in the combined adjusted income.

215 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
216 commission may by rule define what constitutes:

217 (i) income generated from intangible property; or

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

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

223 (i) there is a reduction in federal basis for a federal tax credit; and

224 (ii) there is no corresponding tax credit allowed in this state.

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

228 Section 3. Section **59-10-1017** is amended to read:

229 **59-10-1017. Utah Educational Savings Plan tax credit.**

230 (1) As used in this section:

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

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

233 (c) "Higher education costs" means the same as that term is defined in Section
234 [53B-8a-102.5](#).

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

237 (i) subject to Subsection (1)(d)(iii), for a claimant, estate, or trust that is an account
238 owner, if that claimant, estate, or trust is other than husband and wife account owners who file
239 a single return jointly, the maximum amount of a qualified investment:

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

241 (B) increased or kept for that taxable year in accordance with Subsections
242 [53B-8a-106](#)(1)(f) and (g);

243 (ii) subject to Subsection (1)(d)(iii), for claimants who are husband and wife account
244 owners who file a single return jointly, the maximum amount of a qualified investment:

- 245 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and
- 246 (B) increased or kept for that taxable year in accordance with Subsections
- 247 53B-8a-106(1)(f) and (g); or
- 248 (iii) for a grantor trust:
- 249 (A) if the owner of the grantor trust has a single filing status or head of household
- 250 filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(d)(i); or
- 251 (B) if the owner of the grantor trust has a joint filing status as defined in Section
- 252 59-10-1018, the amount described in Subsection (1)(d)(ii).
- 253 (e) "Owner of the grantor trust" means the same as that term is defined in Section
- 254 53B-8a-102.5.
- 255 (f) "Qualified investment" means the same as that term is defined in Section
- 256 53B-8a-102.5.
- 257 (2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of
- 258 this section, a claimant, estate, or trust that is an account owner may claim a nonrefundable tax
- 259 credit equal to the product of:
- 260 (a) the amount of a qualified investment made:
- 261 (i) during the taxable year; and
- 262 (ii) into an account owned by the claimant, estate, or trust; and
- 263 (b) 5%.
- 264 (3) A claimant, estate, or trust, or a person other than the claimant, estate, or trust, may
- 265 make a qualified investment described in Subsection (2).
- 266 (4) A claimant, estate, or trust that is an account owner may not claim a tax credit
- 267 under this section with respect to any portion of a qualified investment described in Subsection
- 268 (2) that a claimant, estate, trust, or person described in Subsection (3) deducts on a federal
- 269 income tax return.
- 270 (5) A tax credit under this section may not exceed the maximum amount of a qualified
- 271 investment for the taxable year.
- 272 (6) A claimant, estate, or trust that is an account owner may not carry forward or carry
- 273 back the tax credit under this section.
- 274 ~~[(7) A claimant, estate, or trust may claim a tax credit under this section in addition to~~
- 275 ~~the tax credit described in Section 59-10-1017.1.]~~

276 Section 4. Section **63I-2-259** is amended to read:

277 **63I-2-259. Repeal dates -- Title 59.**

278 (1) In Section **59-2-926**, the language that states "applicable" and "or **53F-2-301.5**" is
279 repealed July 1, 2023.

280 (2) Subsection **59-7-106(1)[(x)](w)** is repealed December 31, 2021.

281 (3) Section **59-7-620** is repealed December 31, 2021.

282 (4) Subsection **59-10-114(2)(j)** is repealed December 31, 2021.

283 Section 5. **Repealer.**

284 This bill repeals:

285 Section **59-10-1017.1, Student Prosperity Savings Program tax credit.**

286 Section 6. **Retrospective operation.**

287 (1) Except as provided in Subsection (2), this bill has retrospective operation for a
288 taxable year beginning on or after January 1, 2021.

289 (2) The changes to Section **63I-2-259** have retrospective operation to January 1, 2021.