

1 **INDIVIDUAL INCOME TAX ADDITION AND**
2 **DEDUCTION AMENDMENTS**

3 2018 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Douglas V. Sagers**

6 Senate Sponsor: Howard A. Stephenson

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Individual Income Tax Act by amending provisions relating to
11 individual income tax additions and deductions.

12 **Highlighted Provisions:**

13 This bill:

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

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

20 ▶ makes technical corrections.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides retrospective operation.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **59-10-114**, as last amended by Laws of Utah 2017, Chapter 389

28 **59-10-202**, as last amended by Laws of Utah 2017, Chapter 389

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

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

32 **59-10-114. Additions to and subtractions from adjusted gross income of an**
33 **individual.**

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

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

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

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

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

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

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

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

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

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

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

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

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

60 (i) is not expended for:

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

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

65 (ii) is:

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

67 (I) who is the account owner; and

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

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

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

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

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

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

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

79 [(iv)] (D) an agency or instrumentality of an entity described in Subsections

80 (1)(e)(i)(A) through [(iii)] (C); and

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

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

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

92 (h) any adoption expense:

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

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

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

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

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

102 (a) the difference between:

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

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

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

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

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

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

114 diminished from the Uintah and Ouray Reservation; and
115 (ii) from a source within the Uintah and Ouray Reservation;
116 (c) an amount received by a resident or nonresident individual or distribution received
117 by a resident or nonresident beneficiary of a resident trust:
118 (i) if that amount or distribution constitutes a refund of taxes imposed by:
119 (A) a state; or
120 (B) the District of Columbia; and
121 (ii) to the extent that amount or distribution is included in adjusted gross income for
122 that taxable year on the federal individual income tax return of the resident or nonresident
123 individual or resident or nonresident beneficiary of a resident trust;
124 (d) the amount of a railroad retirement benefit:
125 (i) paid:
126 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
127 seq.;
128 (B) to a resident or nonresident individual; and
129 (C) for the taxable year; and
130 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
131 that resident or nonresident individual's federal individual income tax return for that taxable
132 year; ~~and~~
133 (e) an amount:
134 (i) received by an enrolled member of an American Indian tribe; and
135 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
136 part on that amount in accordance with:
137 (A) federal law;
138 (B) a treaty; or
139 (C) a final decision issued by a court of competent jurisdiction[-]; and
140 (f) an amount received:
141 (i) for the interest on a bond, note, or other obligation issued by an entity for which

142 state statute provides an exemption of interest on its bonds from state individual income tax;
143 (ii) by a resident or nonresident individual;
144 (iii) for the taxable year; and
145 (iv) to the extent the amount is included in adjusted gross income on the taxpayer's
146 federal income tax return for the taxable year.

147 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:
148 (i) the taxpayer is a Ute tribal member; and
149 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
150 requirements of this Subsection (3).

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

152 (i) may not:

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

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

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

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

157 (ii) shall:

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

159 (B) be in writing;

160 (C) be signed by:

161 (I) the governor; and

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

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

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

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

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

170 after the January 1 following the termination of the agreement.

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

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

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

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

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

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

184 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
185 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
186 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
187 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
188 8814.

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

191 (i) the lesser of:

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

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

194 (I) the child's taxable interest;

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

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

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

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

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

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

208 (i) the entity; or

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

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

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

212 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**
213 **nonresident estate or trust.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

283 (d) any amount:

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

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

286 (A) a state; or

287 (B) the District of Columbia; and

288 (iii) to the extent that amount is included in total income on that resident or nonresident

289 estate's or trust's federal tax return for estates and trusts for that taxable year;

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

291 (i) paid:

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

293 seq.;

294 (B) to a resident or nonresident estate or trust derived from a deceased resident or

295 nonresident individual; and

296 (C) for the taxable year; and

297 (ii) to the extent that railroad retirement benefit is included in total income on that

298 resident or nonresident estate's or trust's federal tax return for estates and trusts;

299 (f) an amount:

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

301 deceased enrolled member of an American Indian tribe; and

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

303 part on that amount in accordance with:

304 (A) federal law;

305 (B) a treaty; or

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

307 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section

308 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the

309 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for

310 the taxable year; ~~and~~

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

312 (i) an amount received:

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

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

316 (iii) for the taxable year; and

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

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

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

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

329 (i) the entity; or

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

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

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

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

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

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

337 (i) may not:

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

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

340 subtraction described in Subsection (2)(c); or

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

342 (ii) shall:

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

344 (B) be in writing;

345 (C) be signed by:

346 (I) the governor; and

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

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

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

350 (c) (i) The governor shall report to the commission by no later than February 1 of each

351 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is

352 in effect.

353 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the

354 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or

355 after the January 1 following the termination of the agreement.

356 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,

357 Utah Administrative Rulemaking Act, the commission may make rules:

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

359 Ouray Reservation; and

360 (ii) that are substantially similar to how adjusted gross income derived from Utah

361 sources is determined under Section [59-10-117](#).

362 **Section 3. Retrospective operation.**

363 This bill has retrospective operation for a taxable year beginning on or after January 1,

364 2018.