

CHARITABLE CONTRIBUTION DEDUCTION

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts a subtraction from income for the purposes of individual income tax.

Highlighted Provisions:

This bill:

- ▶ under certain circumstances allows an individual to subtract from the individual's adjusted gross income the amount of the individual's charitable contributions during the taxable year, up to a specified amount; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-10-114, as last amended by Laws of Utah 2021, Chapter 367

59-10-1004, as renumbered and amended by Laws of Utah 2006, Chapter 223

59-10-1041, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

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

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



28 **59-10-114. Additions to and subtractions from adjusted gross income of an**
29 **individual.**

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

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

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

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

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

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

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

44 (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

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

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

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

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

56 (i) is not expended for:

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

58 (B) a payment or distribution that qualifies as an exception to the additional tax for

59 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
60 Internal Revenue Code; and

61 (ii) is:

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

63 (I) who is the account owner; and

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

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

68 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of
69 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
70 evidences of indebtedness:

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

72 (A) a state other than this state;

73 (B) the District of Columbia;

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

75 (D) an agency or instrumentality of an entity described in Subsections (1)(e)(i)(A)
76 through (C); and

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

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

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

88 (h) any adoption expense:

89 (i) for which a resident or nonresident individual receives reimbursement from another

90 person; and

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

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

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

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

98 (a) the difference between:

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

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

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

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

107 (b) if the conditions of Subsection (3)(a) are met, the amount of income derived by a
108 Ute tribal member:

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

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

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

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

115 (A) a state; or

116 (B) the District of Columbia; and

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

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

- 121 (i) paid:
- 122 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
- 123 seq.;
- 124 (B) to a resident or nonresident individual; and
- 125 (C) for the taxable year; and
- 126 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
- 127 that resident or nonresident individual's federal individual income tax return for that taxable
- 128 year;
- 129 (e) an amount:
- 130 (i) received by an enrolled member of an American Indian tribe; and
- 131 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
- 132 part on that amount in accordance with:
- 133 (A) federal law;
- 134 (B) a treaty; or
- 135 (C) a final decision issued by a court of competent jurisdiction;
- 136 (f) an amount received:
- 137 (i) for the interest on a bond, note, or other obligation issued by an entity for which
- 138 state statute provides an exemption of interest on its bonds from state individual income tax;
- 139 (ii) by a resident or nonresident individual;
- 140 (iii) for the taxable year; and
- 141 (iv) to the extent the amount is included in adjusted gross income on the taxpayer's
- 142 federal income tax return for the taxable year;
- 143 (g) the amount of all income, including income apportioned to another state, of a
- 144 nonmilitary spouse of an active duty military member if:
- 145 (i) both the nonmilitary spouse and the active duty military member are nonresident
- 146 individuals;
- 147 (ii) the active duty military member is stationed in Utah;
- 148 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.
- 149 4001(a)(2); and
- 150 (iv) the income is included in adjusted gross income for federal income tax purposes
- 151 for the taxable year;

152 (h) for a taxable year beginning on or after January 1, 2019, but beginning on or before
153 December 31, 2019, only:

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

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

160 (i) for a taxable year beginning on or after January 1, 2020, the amount of any FDIC
161 premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income
162 tax purposes under Section 162(r), Internal Revenue Code, for the taxable year; ~~and~~

163 (j) an amount of a distribution from a qualified retirement plan under Section 401(a),
164 Internal Revenue Code, if:

165 (i) the amount of the distribution is included in adjusted gross income on the resident
166 or nonresident individual's federal individual income tax return for the taxable year; and

167 (ii) for the taxable year when the amount of the distribution was contributed to the
168 qualified retirement plan, the amount of the distribution:

169 (A) was not included in adjusted gross income on the resident or nonresident
170 individual's federal individual income tax return for the taxable year; and

171 (B) was taxed by another state of the United States, the District of Columbia, or a
172 possession of the United States[-]; and

173 (k) if the individual claims the standard deduction on the individual's federal income
174 tax return for the taxable year, the aggregate amount of the individual's contributions during the
175 taxable year to charitable organizations as defined in Section 170, Internal Revenue Code, that
176 are located in the state, up to:

177 (i) \$300 for an individual who has a single filing status or a head of household filing
178 status as those terms are defined in Section 59-10-1018; or

179 (ii) \$600 for an individual who has a joint filing status as defined in Section
180 59-10-1018.

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

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

183 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
184 requirements of this Subsection (3).

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

186 (i) may not:

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

188 (B) provide a subtraction under this section greater than or different from the
189 subtraction described in Subsection (2)(b); or

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

191 (ii) shall:

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

193 (B) be in writing;

194 (C) be signed by:

195 (I) the governor; and

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

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

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

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

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

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

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

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

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

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

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

218 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
219 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
220 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
221 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
222 8814.

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

225 (i) the lesser of:

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

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

228 (I) the child's taxable interest;

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

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

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

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

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

239 (b) for an entity described in Subsection (1)(e)(i)(C) or (D), the following do not
240 impose a tax based on income on any part of the bonds, notes, and other evidences of
241 indebtedness of this state:

242 (i) the entity; or

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

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

245 Section 2. Section **59-10-1004** is amended to read:

246 **59-10-1004. Tax credit for cash contributions to sheltered workshops.**

247 (1) For tax years beginning January 1, 1983, and thereafter, in computing the tax due
248 the state under Section **59-10-104** there shall be a nonrefundable tax credit allowed for cash
249 contributions made by a claimant, estate, or trust within the taxable year to nonprofit
250 rehabilitation sheltered workshop facilities for persons with a disability operating in Utah that
251 are certified by the Department of Human Services as a qualifying facility.

252 (2) The allowable tax credit is an amount equal to 50% of the aggregate amount of the
253 cash contributions to the qualifying rehabilitation facilities, but the allowed tax credit may not
254 exceed \$200.

255 (3) The amount of contribution claimed as a tax credit under this section may not also
256 be claimed as:

257 (a) a charitable deduction in determining net taxable income[-]; or

258 (b) a subtraction from the individual's adjusted gross income under Section **59-10-114**.

259 Section 3. Section **59-10-1041** is amended to read:

260 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**
261 **Scholarship Program.**

262 (1) Except as provided in Subsection (3), a claimant, estate, or trust that makes a
263 donation to the Special Needs Opportunity Scholarship Program established in Section
264 **53E-7-402**, may claim a nonrefundable tax credit equal to 100% of the amount stated on a tax
265 credit certificate issued in accordance with Section **53E-7-407**.

266 (2) (a) If the amount of a tax credit listed on the tax credit certificate exceeds a
267 claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the claimant,
268 estate, or trust may carry forward the amount of the tax credit exceeding the liability for a
269 period that does not exceed the next three taxable years.

270 (b) A claimant, estate, or trust may not carry back the amount of the tax credit that
271 exceeds the claimant's, estate's, or trust's tax liability for the taxable year.

272 (3) A claimant, estate, or trust may not claim a credit described in Subsection (1) to the
273 extent the claimant, estate, or trust claims a donation described in Subsection (1) as:

274 (a) an itemized deduction on the claimant's, estate's, or trust's federal individual income
275 tax return for that taxable year[-]; or

276 (b) a subtraction from the individual's adjusted gross income under Section [59-10-114](#).
277 Section 4. **Retrospective operation.**
278 This bill has retrospective operation for a taxable year beginning on or after January 1,
279 2022.