

1 **TAX REFORM PROVISIONS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Howard A. Stephenson**

5 House Sponsor: Steve Eliason

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to federal tax reform.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ prohibits an individual from receiving the homeowner's or renter's credit if the
13 individual is a dependent with respect to whom another individual claims certain tax
14 credits;
- 15 ▶ provides that a corporation may pay taxes on deferred foreign income in
16 installments under certain circumstances;
- 17 ▶ addresses when an individual is considered to have domicile in this state for
18 purposes of income tax; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 **⤴→ [None] This bill provides retrospective operation. ←⤵**

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **59-2-1208**, as last amended by Laws of Utah 2016, Chapter 375

27 **59-2-1209**, as last amended by Laws of Utah 2016, Chapter 375



28 **59-10-136**, as enacted by Laws of Utah 2011, Chapter 410

29 ENACTS:

30 **59-7-118**, Utah Code Annotated 1953

31

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

33 Section 1. Section **59-2-1208** is amended to read:

34 **59-2-1208. Amount of homeowner's credit -- Cost-of-living adjustment --**
35 **Limitation -- General Fund as source of credit.**

36 (1) (a) Subject to Subsection (2), for a calendar year beginning on or after January 1,
37 2007, a claimant may claim a homeowner's credit that does not exceed the following amounts:

38 If household income is	Homeowner's credit
39 \$0 -- \$9,159	\$798
40 \$9,160 -- \$12,214	\$696
41 \$12,215 -- \$15,266	\$597
42 \$15,267 -- \$18,319	\$447
43 \$18,320 -- \$21,374	\$348
44 \$21,375 -- \$24,246	\$199
45 \$24,247 -- \$26,941	\$98

46 (b) (i) For a calendar year beginning on or after January 1, 2008, the commission shall
47 increase or decrease the household income eligibility amounts and the credits under Subsection
48 (1)(a) by a percentage equal to the percentage difference between the consumer price index for
49 the preceding calendar year and the consumer price index for calendar year 2006.

50 (ii) For purposes of Subsection (1)(b)(i), the commission shall calculate the consumer
51 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

52 ~~[(2) An individual who is claimed as a personal exemption on another individual's~~
53 ~~individual income tax return during any portion of a calendar year for which the individual~~
54 ~~seeks to claim a homeowner's credit under this section may not receive the homeowner's~~
55 ~~credit.]~~

56 (2) An individual may not receive the homeowner's credit under this section if:

57 (a) the individual is claimed as a personal exemption on another individual's federal

58 income tax return during any portion of a calendar year for which the individual seeks to claim
 59 the homeowner's credit under this section; or

60 (b) the individual is a dependent with respect to whom another individual claims a tax
 61 credit under ~~§~~→ [Subsection] Section ←~~§~~ 24(h)(4), Internal Revenue Code, during any portion of a
 61a calendar year
 62 for which the individual seeks to claim the homeowner's credit under this section.

63 (3) A payment for a homeowner's credit allowed by this section, and provided for in
 64 Section 59-2-1204, shall be paid from the General Fund.

65 Section 2. Section 59-2-1209 is amended to read:

66 **59-2-1209. Amount of renter's credit -- Cost-of-living adjustment -- Renter's**
 67 **credit may be claimed only for rent that does not constitute a rental assistance payment --**
 68 **Limitation -- General Fund as source of credit -- Maximum credit.**

69 (1) (a) Subject to Subsections (2) and (3), for a calendar year beginning on or after
 70 January 1, 2007, a claimant may claim a renter's credit for the previous calendar year that does
 71 not exceed the following amounts:

If household income is	Percentage of rent allowed as a credit
\$0 -- \$9,159	9.5%
\$9,160 -- \$12,214	8.5%
\$12,215 -- \$15,266	7.0%
\$15,267 -- \$18,319	5.5%
\$18,320 -- \$21,374	4.0%
\$21,375 -- \$24,246	3.0%
\$24,247 -- \$26,941	2.5%

80 (b) (i) For a calendar year beginning on or after January 1, 2008, the commission shall
 81 increase or decrease the household income eligibility amounts under Subsection (1)(a) by a
 82 percentage equal to the percentage difference between the consumer price index for the
 83 preceding calendar year and the consumer price index for calendar year 2006.

84 (ii) For purposes of Subsection (1)(b)(i), the commission shall calculate the consumer
 85 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

86 (2) A claimant may claim a renter's credit under this part only for rent that does not
 87 constitute a rental assistance payment.

88 ~~[(3) An individual who is claimed as a personal exemption on another individual's~~
 89 ~~individual income tax return during any portion of a calendar year for which the individual~~
 90 ~~seeks to claim a renter's credit under this section may not receive a renter's credit.]~~

91 (3) An individual may not receive the renter's credit under this section if the individual
 92 is:

93 (a) claimed as a personal exemption on another individual's federal income tax return
 94 during any portion of a calendar year for which the individual seeks to claim the renter's credit
 95 under this section; or

96 (b) a dependent with respect to whom another individual claims a tax credit under
 97 §→ [Subsection] Section ←§ 24(h)(4), Internal Revenue Code, during any portion of a calendar
 97a year for which
 98 the individual seeks to claim the renter's credit under this section.

99 (4) A payment for a renter's credit allowed by this section, and provided for in Section
 100 59-2-1204, shall be paid from the General Fund.

101 (5) For calendar years beginning on or after January 1, 2007, a credit under this section
 102 may not exceed the maximum amount allowed as a homeowner's credit for each income
 103 bracket under Subsection 59-2-1208(1)(a).

104 Section 3. Section 59-7-118 is enacted to read:

105 **59-7-118. Section 965, Internal Revenue Code -- Installment payments.**

106 (1) Subject to the other provisions of this section, a corporation may pay in
 107 installments the tax owed under this chapter on deferred foreign income described in Section
 108 965, Internal Revenue Code.

109 (2) Subsection (1) applies:

110 (a) to a corporation that:

111 (i) is authorized to make an election under §→ [Subsection] Section ←§ 965(h), Internal
 111a Revenue Code; §→ and ←§

112 (ii) apportions deferred foreign income described in Section 965, Internal Revenue
 113 Code, to this state; and

114 (b) for a tax year in which a corporation makes an election under §→ [Subsection] Section
 114a ←§ 965(h),

115 Internal Revenue Code, for purposes of the corporation's federal income tax §→ [§] . ←§

116 (3) The same provisions that apply to an election made under §→ [Subsection] Section ←§
 116a 965(h),

117 Internal Revenue Code, for federal purposes apply to an installment payment made under this
 118 section.

119 Section 4. Section **59-10-136** is amended to read:

120 **59-10-136. Domicile -- Temporary absence from state.**

121 (1) (a) An individual is considered to have domicile in this state if:

122 (i) except as provided in Subsection (1)(b), a dependent with respect to whom the
123 individual or the individual's spouse claims a personal exemption or a tax credit under Section
124 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual
125 income tax return is enrolled in a public kindergarten, public elementary school, or public
126 secondary school in this state; or

127 (ii) the individual or the individual's spouse is a resident student in accordance with
128 Section **53B-8-102** who is enrolled in an institution of higher education described in Section
129 **53B-2-101** in this state.

130 (b) The determination of whether an individual is considered to have domicile in this
131 state may not be determined in accordance with Subsection (1)(a)(i) if the individual:

132 (i) is the noncustodial parent of a dependent:

133 (A) with respect to whom the individual claims a personal exemption or a tax credit
134 under Section 24, Internal Revenue Code, on the individual's federal individual income tax
135 return; and

136 (B) who is enrolled in a public kindergarten, public elementary school, or public
137 secondary school in this state; and

138 (ii) is divorced from the custodial parent of the dependent described in Subsection
139 (1)(b)(i).

140 (2) There is a rebuttable presumption that an individual is considered to have domicile
141 in this state if:

142 (a) the individual or the individual's spouse claims a residential exemption in
143 accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's
144 primary residence;

145 (b) the individual or the individual's spouse is registered to vote in this state in
146 accordance with Title 20A, Chapter 2, Voter Registration; or

147 (c) the individual or the individual's spouse asserts residency in this state for purposes
148 of filing an individual income tax return under this chapter, including asserting that the
149 individual or the individual's spouse is a part-year resident of this state for the portion of the

150 taxable year for which the individual or the individual's spouse is a resident of this state.

151 (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not
152 met for an individual to be considered to have domicile in this state, the individual is
153 considered to have domicile in this state if:

154 (i) the individual or the individual's spouse has a permanent home in this state to which
155 the individual or the individual's spouse intends to return after being absent; and

156 (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the
157 individual's spouse's habitation in this state, not for a special or temporary purpose, but with the
158 intent of making a permanent home.

159 (b) The determination of whether an individual is considered to have domicile in this
160 state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into
161 consideration the totality of the following facts and circumstances:

162 (i) whether the individual or the individual's spouse has a driver license in this state;

163 (ii) whether a dependent with respect to whom the individual or the individual's spouse
164 claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the
165 individual's or individual's spouse's federal individual income tax return is a resident student in
166 accordance with Section 53B-8-102 who is enrolled in an institution of higher education
167 described in Section 53B-2-101 in this state;

168 (iii) the nature and quality of the living accommodations that the individual or the
169 individual's spouse has in this state as compared to another state;

170 (iv) the presence in this state of a spouse or dependent with respect to whom the
171 individual or the individual's spouse claims a personal exemption or a tax credit under Section
172 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual
173 income tax return;

174 (v) the physical location in which earned income as defined in Section 32(c)(2),
175 Internal Revenue Code, is earned by the individual or the individual's spouse;

176 (vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or
177 leased by the individual or the individual's spouse;

178 (vii) whether the individual or the individual's spouse is a member of a church, a club,
179 or another similar organization in this state;

180 (viii) whether the individual or the individual's spouse lists an address in this state on

181 mail, a telephone listing, a listing in an official government publication, other correspondence,
182 or another similar item;

183 (ix) whether the individual or the individual's spouse lists an address in this state on a
184 state or federal tax return;

185 (x) whether the individual or the individual's spouse asserts residency in this state on a
186 document, other than an individual income tax return filed under this chapter, filed with or
187 provided to a court or other governmental entity;

188 (xi) the failure of an individual or the individual's spouse to obtain a permit or license
189 normally required of a resident of the state for which the individual or the individual's spouse
190 asserts to have domicile; or

191 (xii) whether the individual is an individual described in Subsection (1)(b).

192 (4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions
193 of this Subsection (4), an individual is not considered to have domicile in this state if the
194 individual meets the following qualifications:

195 (i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's
196 spouse are absent from the state for at least 761 consecutive days; and

197 (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor
198 the individual's spouse:

199 (A) return to this state for more than 30 days in a calendar year;

200 (B) claim a personal exemption or a tax credit under Section 24, Internal Revenue
201 Code, on the individual's or individual's spouse's federal individual income tax return with
202 respect to a dependent who is enrolled in a public kindergarten, public elementary school, or
203 public secondary school in this state, unless the individual is an individual described in
204 Subsection (1)(b);

205 (C) are resident students in accordance with Section 53B-8-102 who are enrolled in an
206 institution of higher education described in Section 53B-2-101 in this state;

207 (D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for
208 that individual's or individual's spouse's primary residence; or

209 (E) assert that this state is the individual's or the individual's spouse's tax home for
210 federal individual income tax purposes.

211 (b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of

212 Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered
213 to have domicile in this state by filing an individual income tax return in this state as a resident
214 individual.

215 (c) For purposes of Subsection (4)(a), an absence from the state:

216 (i) begins on the later of the date:

217 (A) the individual leaves this state; or

218 (B) the individual's spouse leaves this state; and

219 (ii) ends on the date the individual or the individual's spouse returns to this state if the
220 individual or the individual's spouse remains in this state for more than 30 days in a calendar
221 year.

222 (d) An individual shall file an individual income tax return or amended individual
223 income tax return under this chapter and pay any applicable interest imposed under Section
224 59-1-402 if:

225 (i) the individual did not file an individual income tax return or amended individual
226 income tax return under this chapter based on the individual's belief that the individual has met
227 the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

228 (ii) the individual or the individual's spouse fails to meet a qualification of Subsection
229 (4)(a) to not be considered to have domicile in this state.

230 (e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual
231 income tax return or amended individual income tax return under Subsection (4)(d) shall pay
232 any applicable penalty imposed under Section 59-1-401.

233 (ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and
234 (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return
235 or amended individual income tax return under this chapter:

236 (A) files the individual income tax return or amended individual income tax return
237 within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be
238 considered to have domicile in this state; and

239 (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax
240 due on the return, any interest imposed under Section 59-1-402, and any applicable penalty
241 imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or
242 (5).

243 (5) (a) If an individual is considered to have domicile in this state in accordance with
244 this section, the individual's spouse is considered to have domicile in this state.

245 (b) For purposes of this section, an individual is not considered to have a spouse if:

246 (i) the individual is legally separated or divorced from the spouse; or

247 (ii) the individual and the individual's spouse claim married filing separately filing
248 status for purposes of filing a federal individual income tax return for the taxable year.

249 (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an
250 individual's filing status on a federal individual income tax return or a return filed under this
251 chapter may not be considered in determining whether an individual has a spouse.

252 (6) For purposes of this section, whether or not an individual or the individual's spouse
253 claims a property tax residential exemption under Chapter 2, Property Tax Act, for the
254 residential property that is the primary residence of a tenant of the individual or the individual's
255 spouse may not be considered in determining domicile in this state.

255a **Ŝ→ Section 5. Retrospective operation. ←Ŝ**

255b **Ŝ→ (1) Except as provided in Subsection (2), this bill has retrospective operation beginning**
255c **on January 1, 2018. ←Ŝ**

255d **Ŝ→ (2) The amendments to Sections 59-7-118 and 59-10-136 have retrospective operation**
255e **for a taxable year beginning on or after January 1, 2018. ←Ŝ**

Legislative Review Note
Office of Legislative Research and General Counsel