

FDIC PREMIUM DEDUCTION AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: _____

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

General Description:

This bill modifies the Corporate Franchise and Income Taxes code and the Individual Income Tax Act by amending provisions relating to certain subtractions from unadjusted income or adjusted gross income.

Highlighted Provisions:

This bill:

- enacts a provision that authorizes a subtraction from unadjusted income of a corporate taxpayer, adjusted gross income of an individual income taxpayer, and unadjusted income of a resident or nonresident estate or trust for the amount of any FDIC premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income tax purposes; and

- makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:



28 [59-7-106](#), as last amended by Laws of Utah 2017, Chapter 389
29 [59-10-114](#), as last amended by Laws of Utah 2018, Chapters 190 and 370
30 [59-10-202](#), as last amended by Laws of Utah 2018, Chapter 190

31

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

33 Section 1. Section [59-7-106](#) is amended to read:

34 **[59-7-106. Subtractions from unadjusted income.](#)**

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

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

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

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

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

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

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

52 (g) the safe harbor lease adjustment required under Subsections [59-7-111\(1\)\(b\)](#) and
53 [\(2\)\(b\)](#);

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

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

- 59 (i) if that tax is imposed for the privilege of:
60 (A) doing business; or
61 (B) exercising a corporate franchise;
- 62 (ii) if that tax is paid by the corporation to:
63 (A) Utah;
64 (B) another state of the United States;
65 (C) a foreign country;
66 (D) a United States possession; or
67 (E) the Commonwealth of Puerto Rico; and
- 68 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;
- 69 (j) a charitable contribution, to the extent the charitable contribution is allowed as a
70 subtraction under Section 59-7-109;
- 71 (k) subject to Subsection (3), 50% of a dividend considered to be received or received
72 from a subsidiary that:
- 73 (i) is a member of the unitary group;
74 (ii) is organized or incorporated outside of the United States; and
75 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;
- 76 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a
77 foreign operating company;
- 78 (m) the amount of gain or loss that is included in unadjusted income but not recognized
79 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
80 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
81 with Section 338(h)(10), Internal Revenue Code;
- 82 (n) the amount of gain or loss that is included in unadjusted income but not recognized
83 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance
84 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
85 Revenue Code, has been made for federal purposes;
- 86 (o) subject to Subsection (5), an adjustment to the following due to a difference
87 between basis for federal purposes and basis as computed under Section 59-7-107:
- 88 (i) an amortization expense;
89 (ii) a depreciation expense;

- 90 (iii) a gain;
- 91 (iv) a loss; or
- 92 (v) an item similar to Subsections (1)(o)(i) through (iv);
- 93 (p) an interest expense that is not deducted on a federal corporation income tax return
- 94 under Section 265(b) or 291(e), Internal Revenue Code;
- 95 (q) 100% of dividends received from a subsidiary that is an insurance company if that
- 96 subsidiary that is an insurance company is:
- 97 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
- 98 (ii) under common ownership;
- 99 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as
- 100 defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section
- 101 53B-8a-102.5:
- 102 (i) that the corporation or a person other than the corporation makes into an account
- 103 owned by the corporation during the taxable year;
- 104 (ii) to the extent that neither the corporation nor the person other than the corporation
- 105 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax
- 106 return; and
- 107 (iii) to the extent the qualified investment does not exceed the maximum amount of the
- 108 qualified investment that may be subtracted from unadjusted income for a taxable year in
- 109 accordance with Subsection 53B-8a-106(1);
- 110 (s) for a corporation that makes a donation, as that term is defined in Section
- 111 53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the
- 112 amount of the donation to the extent that the corporation did not deduct the donation on a
- 113 federal income tax return;
- 114 (t) for purposes of income included in a combined report under Part 4, Combined
- 115 Reporting, the entire amount of the dividends a member of a unitary group receives or is
- 116 considered to receive from a captive real estate investment trust; ~~and~~
- 117 (u) the increase in income for federal income tax purposes due to claiming a:
- 118 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or
- 119 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code~~[-];~~ and
- 120 (v) the amount of any FDIC premium paid or incurred by the taxpayer that is

121 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
122 Revenue Code.

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

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

125 (i) under this chapter for the taxable year for which the net capital loss is incurred; and

126 (ii) by the due date of the return, including extensions; and

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

128 (i) subtracted for the taxable year for which the net capital loss is incurred; or

129 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
130 Code.

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

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

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

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

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

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

148 (A) not to exceed 100%; and

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

151 (II) the denominator of which is the current year earnings and profits of the foreign

152 subsidiary as determined under the Internal Revenue Code.

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

155 (i) if the taxpayer elects to file a worldwide combined report as provided in Section
156 59-7-403; or

157 (ii) for the following:

158 (A) income generated from intangible property; or

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

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

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

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

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

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

172 (i) income generated from intangible property; or

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

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

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

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

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

183 Section 2. Section **59-10-114** is amended to read:

184 **59-10-114. Additions to and subtractions from adjusted gross income of an**
185 **individual.**

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

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

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

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

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

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

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

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

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

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

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

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

212 (i) is not expended for:

213 (A) higher education costs as defined in Section [53B-8a-102.5](#); or

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

217 (ii) is:

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

219 (I) who is the account owner; and

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

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

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

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

228 (A) a state other than this state;

229 (B) the District of Columbia;

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

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

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

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

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

244 (h) any adoption expense:

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

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

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

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

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

254 (a) the difference between:

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

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

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

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

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

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

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

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

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

271 (A) a state; or

272 (B) the District of Columbia; and

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

276 (d) the amount of a railroad retirement benefit:
277 (i) paid:
278 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
279 seq.;

280 (B) to a resident or nonresident individual; and
281 (C) for the taxable year; and
282 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
283 that resident or nonresident individual's federal individual income tax return for that taxable
284 year;

285 (e) an amount:
286 (i) received by an enrolled member of an American Indian tribe; and
287 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
288 part on that amount in accordance with:

289 (A) federal law;
290 (B) a treaty; or
291 (C) a final decision issued by a court of competent jurisdiction;
292 (f) an amount received:
293 (i) for the interest on a bond, note, or other obligation issued by an entity for which
294 state statute provides an exemption of interest on its bonds from state individual income tax;
295 (ii) by a resident or nonresident individual;
296 (iii) for the taxable year; and
297 (iv) to the extent the amount is included in adjusted gross income on the taxpayer's
298 federal income tax return for the taxable year; [~~and~~]

299 (g) the amount of all income, including income apportioned to another state, of a
300 nonmilitary spouse of an active duty military member if:
301 (i) both the nonmilitary spouse and the active duty military member are nonresident
302 individuals;
303 (ii) the active duty military member is stationed in Utah;
304 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.
305 4001(a)(2); and
306 (iv) the income is included in adjusted gross income for federal income tax purposes

307 for the taxable year[-]; and

308 (h) the amount of any FDIC premium paid or incurred by the taxpayer that is
309 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
310 Revenue Code.

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

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

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

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

316 (i) may not:

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

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

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

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

321 (ii) shall:

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

323 (B) be in writing;

324 (C) be signed by:

325 (I) the governor; and

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

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

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

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

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

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

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

338 Ouray Reservation; and

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

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

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

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

348 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
349 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
350 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
351 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
352 8814.

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

355 (i) the lesser of:

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

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

358 (I) the child's taxable interest;

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

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

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

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

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

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

372 (i) the entity; or

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

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

375 Section 3. Section **59-10-202** is amended to read:

376 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**
377 **nonresident estate or trust.**

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

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

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

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

387 (A) a state other than this state;

388 (B) the District of Columbia;

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

390 (D) an agency or instrumentality of an entity described in Subsections (1)(b)(i)(A)
391 through (C); and

392 (ii) to the extent the interest is not included in federal taxable income on the taxpayer's
393 federal income tax return for the taxable year;

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

396 (i) in an S corporation; and

397 (ii) that is held by an electing small business trust;

398 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
399 from the account of a resident or nonresident estate or trust that is an account owner as defined

400 in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount
401 withdrawn from the account of the resident or nonresident estate or trust that is the account
402 owner:

403 (i) is not expended for:

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

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

408 (ii) is:

409 (A) subtracted by the resident or nonresident estate or trust:

410 (I) that is the account owner; and

411 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a
412 taxable year beginning on or before December 31, 2007; or

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

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

416 (2) There shall be subtracted from unadjusted income of a resident or nonresident
417 estate or trust:

418 (a) the interest or a dividend on obligations or securities of the United States and its
419 possessions or of any authority, commission, or instrumentality of the United States, to the
420 extent that interest or dividend is included in gross income for federal income tax purposes for
421 the taxable year but exempt from state income taxes under the laws of the United States, but
422 the amount subtracted under this Subsection (2) shall be reduced by any interest on
423 indebtedness incurred or continued to purchase or carry the obligations or securities described
424 in this Subsection (2), and by any expenses incurred in the production of interest or dividend
425 income described in this Subsection (2) to the extent that such expenses, including amortizable
426 bond premiums, are deductible in determining federal taxable income;

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

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

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

- 431 (iii) no assets of the trust were held, at any time after January 1, 2003, in another
432 resident irrevocable trust created by the same settlor or the spouse of the same settlor;
- 433 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);
434 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the
435 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,
436 Subchapter J, Subpart E of the Internal Revenue Code; and
- 437 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on
438 indebtedness incurred or continued to purchase or carry the assets generating the income
439 described in this Subsection (2)(b), and by any expenses incurred in the production of income
440 described in this Subsection (2)(b), to the extent that those expenses, including amortizable
441 bond premiums, are deductible in determining federal taxable income;
- 442 (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or
443 nonresident estate or trust derived from a deceased Ute tribal member:
- 444 (i) during a time period that the Ute tribal member resided on homesteaded land
445 diminished from the Uintah and Ouray Reservation; and
- 446 (ii) from a source within the Uintah and Ouray Reservation;
- 447 (d) any amount:
- 448 (i) received by a resident or nonresident estate or trust;
- 449 (ii) that constitutes a refund of taxes imposed by:
- 450 (A) a state; or
451 (B) the District of Columbia; and
- 452 (iii) to the extent that amount is included in total income on that resident or nonresident
453 estate's or trust's federal tax return for estates and trusts for that taxable year;
- 454 (e) the amount of a railroad retirement benefit:
- 455 (i) paid:
- 456 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
457 seq.;
- 458 (B) to a resident or nonresident estate or trust derived from a deceased resident or
459 nonresident individual; and
- 460 (C) for the taxable year; and
- 461 (ii) to the extent that railroad retirement benefit is included in total income on that

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

463 (f) an amount:

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

465 deceased enrolled member of an American Indian tribe; and

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

467 part on that amount in accordance with:

468 (A) federal law;

469 (B) a treaty; or

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

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

472 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the

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

474 the taxable year;

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

476 (i) an amount received:

477 (i) for the interest on a bond, note, or other obligation issued by an entity for which

478 state statute provides an exemption of interest on its bonds from state individual income tax;

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

480 (iii) for the taxable year; and

481 (iv) to the extent the amount is included in federal taxable income on the taxpayer's

482 federal income tax return for the taxable year[-]; and

483 (j) the amount of any FDIC premium paid or incurred by the resident or nonresident

484 estate or trust that is disallowed as a deduction for federal income tax purposes under Section

485 162(r), Internal Revenue Code.

486 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences

487 of indebtedness issued by an entity described in Subsections (1)(b)(i)(A) through (D) may not

488 be added to unadjusted income of a resident or nonresident estate or trust if, as annually

489 determined by the commission:

490 (a) for an entity described in Subsection (1)(b)(i)(A) or (B), the entity and all of the

491 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on

492 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

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

496 (i) the entity; or

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

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

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

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

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

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

504 (i) may not:

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

506 (B) provide a subtraction under this section greater than or different from the
507 subtraction described in Subsection (2)(c); or

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

509 (ii) shall:

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

511 (B) be in writing;

512 (C) be signed by:

513 (I) the governor; and

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

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

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

517 (c) (i) The governor shall report to the commission by no later than February 1 of each
518 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
519 in effect.

520 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
521 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or
522 after the January 1 following the termination of the agreement.

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

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

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

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

529 **Section 4. Retrospective operation.**

530 This bill has retrospective operation for a taxable year beginning on or after January 1,
531 2019.