Senator Wayne A. Harper proposes the following substitute bill:

MILITARY RETIREMENT INCOME TAX AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Candice B. Pierucci

LONG TITLE

General Description:

This bill creates a nonrefundable income tax credit for military retirement pay.

Highlighted Provisions:

This bill:

- defines terms;
- creates a nonrefundable income tax credit for military retirement pay;
- provides that an individual who claims the tax credit for military retirement pay may not also claim the retirement tax credit; 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:

59-10-1002.2, as last amended by Laws of Utah 2016, Chapter 263

59-10-1019, as renumbered and amended by Laws of Utah 2008, Chapter 389

ENACTS:

59-10-1042, Utah Code Annotated 1953

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

Section 1. Section **59-10-1002.2** is amended to read:

59-10-1002.2. Apportionment of tax credits.

(1) A nonresident individual or a part-year resident individual that claims a tax credit in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1022, 59-10-1023, 59-10-1024, [~~or~~] 59-10-1028, or 59-10-1042 may only claim an apportioned amount of the tax credit equal to:

(a) for a nonresident individual, the product of:

(i) the state income tax percentage for the nonresident individual; and

(ii) the amount of the tax credit that the nonresident individual would have been allowed to claim but for the apportionment requirements of this section; or

(b) for a part-year resident individual, the product of:

(i) the state income tax percentage for the part-year resident individual; and

(ii) the amount of the tax credit that the part-year resident individual would have been allowed to claim but for the apportionment requirements of this section.

(2) A nonresident estate or trust that claims a tax credit in accordance with Section 59-10-1017, 59-10-1020, 59-10-1022, 59-10-1024, or 59-10-1028 may only claim an apportioned amount of the tax credit equal to the product of:

(a) the state income tax percentage for the nonresident estate or trust; and

(b) the amount of the tax credit that the nonresident estate or trust would have been allowed to claim but for the apportionment requirements of this section.

Section 2. Section **59-10-1019** is amended to read:

59-10-1019. Definitions -- Nonrefundable retirement tax credits.

(1) As used in this section:

(a) "Eligible [~~age 65 or older retiree~~] claimant" means a claimant, regardless of whether that claimant is retired, who[~~:~~] was born on or before December 31, 1952.

[~~(i) is 65 years of age or older; and~~]

[~~(ii) was born on or before December 31, 1952.~~]

[~~(b) (i) "Eligible retirement income" means income received by an eligible under age~~

~~65 retiree as a pension or annuity if that pension or annuity is:~~]

[~~(A) paid to the eligible under age 65 retiree or the surviving spouse of an eligible under age 65 retiree; and~~]

[~~(B) (I) paid from an annuity contract purchased by an employer under a plan that meets the requirements of Section 404(a)(2), Internal Revenue Code;~~]

[~~(II) purchased by an employee under a plan that meets the requirements of Section 408, Internal Revenue Code; or~~]

[~~(III) paid by:~~]

[~~(Aa) the United States;~~]

[~~(Bb) a state or a political subdivision of a state; or~~]

[~~(Cc) the District of Columbia.~~]

[~~(ii) "Eligible retirement income" does not include amounts received by the spouse of a living eligible under age 65 retiree because of the eligible under age 65 retiree's having been employed in a community property state.~~]

[~~(c) "Eligible under age 65 retiree" means a claimant, regardless of whether that claimant is retired, who:~~]

[~~(i) is younger than 65 years of age;~~]

[~~(ii) was born on or before December 31, 1952; and~~]

[~~(iii) has eligible retirement income for the taxable year for which a tax credit is claimed under this section.~~]

[~~(d)~~] (b) "Head of household filing status" [~~is as~~] means the same as that term is defined in Section 59-10-1018.

[~~(e)~~] (c) "Joint filing status" [~~is as~~] means the same as that term is defined in Section 59-10-1018.

[~~(f)~~] (d) "Married filing separately status" means a married individual who:

(i) does not file a single federal individual income tax return jointly with that married individual's spouse for the taxable year; and

(ii) files a single federal individual income tax return for the taxable year.

[~~(g)~~] (e) "Modified adjusted gross income" means the sum of an eligible [~~age 65 or older retiree's or eligible under age 65 retiree's~~] claimant's:

(i) adjusted gross income for the taxable year for which a tax credit is claimed under this section;

(ii) [~~any~~] interest income that is not included in adjusted gross income for the taxable year described in Subsection (1)[~~(g)~~](e)(i); and

(iii) [~~any~~] addition to adjusted gross income required by Section 59-10-114 for the taxable year described in Subsection (1)[~~(g)~~](e)(i).

[~~(h)~~] (f) "Single filing status" means a single individual who files a single federal individual income tax return for the taxable year.

(2) Except as provided in Section 59-10-1002.2 and [~~subject to Subsections (3) through (5): (a)~~] Subsections (3) and (4), each eligible [~~age 65 or older retiree~~] claimant may claim a nonrefundable tax credit of $450 against taxes otherwise due under this part[~~; or~~].

[~~(b) each eligible under age 65 retiree may claim a nonrefundable tax credit against taxes otherwise due under this part in an amount equal to the lesser of:~~]

[~~(i) $288; or~~]

[~~(ii) the product of:~~]

[~~(A) the eligible under age 65 retiree's eligible retirement income for the taxable year for which the eligible under age 65 retiree claims a tax credit under this section; and~~]

[~~(B) 6%.~~]

[~~(3) A tax credit under this section may not be carried forward or carried back.~~]

(3) (a) An eligible claimant may not:

(i) carry forward or carry back the amount of a tax credit under this section that exceeds the eligible claimant's tax liability for the taxable year; or

(ii) claim a tax credit under this section and a tax credit under Section 59-10-1042.

(b) An eligible claimant who qualifies for a tax credit under this section and a tax credit under Section 59-10-1042 may elect whether to claim a tax credit under this section or a tax credit under Section 59-10-1042.

(4) The [~~sum of the tax credits~~] tax credit allowed by Subsection (2) claimed on [~~one~~] a return filed under this part shall be reduced by $.025 for each dollar by which modified adjusted gross income for purposes of the return exceeds:

(a) for a federal individual income tax return that is allowed a married filing separately status, $16,000;

(b) for a federal individual income tax return that is allowed a single filing status,

$25,000;

(c) for a federal individual income tax return that is allowed a head of household filing status, $32,000; or

(d) for a return under this chapter that is allowed a joint filing status, $32,000.

[~~(5) For purposes of determining the ownership of items of retirement income under this section, common law doctrine shall be applied in all cases even though some items of retirement income may have originated from service or investments in a community property state.~~]

Section 3. Section **59-10-1042** is enacted to read:

59-10-1042. Nonrefundable tax credit for military retirement.

(1) As used in this section:

(a) (i) "Military retirement pay" means retirement pay, including survivor benefits, that relates to service in the armed forces, including service in the Reserves or the National Guard.

(ii) "Military retirement pay" does not include:

(A) Social Security income;

(B) 401(k) or IRA distributions; or

(C) income from other sources.

(b) "Survivor benefits" means the retired pay portion of the benefits described in 10 U.S.C. Secs. 1447 through 1455.

(2) Except as provided in Section 59-10-1002.2, a claimant who receives military retirement pay may claim a nonrefundable tax credit against taxes equal to the product of:

(a) the percentage listed in Subsection 59-10-104(2); and

(b) the amount of military retirement pay that is included in adjusted gross income on the claimant's federal income tax return for the taxable year.

(3) (a) A claimant may not:

(i) carry forward or carry back the amount of a tax credit that exceeds the claimant's tax liability for the taxable year; or

(ii) claim a tax credit under this section and a tax credit under Section 59-10-1019 for the same taxable year.

(b) A claimant that qualifies for a tax credit under this section and a tax credit under Section 59-10-1019 may elect whether to claim a tax credit under this section or a tax credit under Section 59-10-1019.

Section 4. **Retrospective operation.**

This bill has retrospective operation for a taxable year beginning on or after January 1, 2021.