

INCOME TAX DEDUCTION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Phil Lyman

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill provides for income tax deductions.

Highlighted Provisions:

This bill:

- defines terms;
- establishes corporate and individual income tax deductions for bonus depreciation on certain assets; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-7-106, as last amended by Laws of Utah 2021, Chapters 368, 370**59-10-114**, as last amended by Laws of Utah 2023, Chapter 470

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **59-7-106** is amended to read:**59-7-106. Subtractions from unadjusted income.**

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

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

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

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

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

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

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

(g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and (2)(b);

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

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

(i) if that tax is imposed for the privilege of:

(A) doing business; or

(B) exercising a corporate franchise;

(ii) if that tax is paid by the corporation to:

(A) Utah;

(B) another state of the United States;

(C) a foreign country;

(D) a United States possession; or

(E) the Commonwealth of Puerto Rico; and

(iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

(j) a charitable contribution, to the extent the charitable contribution is allowed as a subtraction under Section 59-7-109;

(k) subject to Subsection (3), 50% of a dividend considered to be received or received from a subsidiary that:

(i) is a member of the unitary group;

(ii) is organized or incorporated outside of the United States; and

(iii) is not included in a combined report under Section 59-7-402 or 59-7-403;

(l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a foreign operating company;

(m) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, if an election has been made in accordance with Section 338(h)(10), Internal Revenue Code;

(n) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal Revenue Code, has been made for federal purposes;

(o) subject to Subsection (5), an adjustment to the following due to a difference between basis for federal purposes and basis as computed under Section 59-7-107:

(i) an amortization expense;

(ii) a depreciation expense;

(iii) a gain;

(iv) a loss; or

(v) an item similar to Subsections (1)(o)(i) through (iv);

(p) an interest expense that is not deducted on a federal corporation income tax return under Section 265(b) or 291(e), Internal Revenue Code;

(q) 100% of dividends received from a subsidiary that is an insurance company if that subsidiary that is an insurance company is:

- 90 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
91 (ii) under common ownership;
92 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as
93 defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section
94 53B-8a-102.5:
- 95 (i) that the corporation or a person other than the corporation makes into an account
96 owned by the corporation during the taxable year;
97 (ii) to the extent that neither the corporation nor the person other than the corporation
98 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax
99 return; and
100 (iii) to the extent the qualified investment does not exceed the maximum amount of the
101 qualified investment that may be subtracted from unadjusted income for a taxable year in
102 accordance with Subsection 53B-8a-106(1);
103 (s) for purposes of income included in a combined report under Part 4, Combined
104 Reporting, the entire amount of the dividends a member of a unitary group receives or is
105 considered to receive from a captive real estate investment trust;
106 (t) the increase in income for federal income tax purposes due to claiming a:
107 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or
108 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code;
109 (u) for a taxable year beginning on or after January 1, 2019, but beginning on or before
110 December 31, 2019, only:
111 (i) the amount of any FDIC premium paid or incurred by the taxpayer that is
112 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
113 Revenue Code, on the taxpayer's 2018 federal income tax return; plus
114 (ii) the amount of any FDIC premium paid or incurred by the taxpayer that is
115 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
116 Revenue Code, for the taxable year; and
117 (v) for a taxable year beginning on or after January 1, 2020, the amount of any FDIC
118 premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income
119 tax purposes under Section 162(r), Internal Revenue Code, for the taxable year.
- 120 (2) For purposes of Subsection (1)(b):

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

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

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

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

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

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

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

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

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

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

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

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

(A) not to exceed 100%; and

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

(II) the denominator of which is the current year earnings and profits of the foreign subsidiary as determined under the Internal Revenue Code.

(d) A dividend described in Subsection (1)(k) includes amounts included in federal taxable income under Section 965(a), Internal Revenue Code and amounts included in federal

taxable income under Section 951A, Internal Revenue Code.

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

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

(ii) for the following:

(A) income generated from intangible property; or

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

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

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

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

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

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

(i) income generated from intangible property; or

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

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

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

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

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

(6) (a) As used in this Subsection (6):

(i) "Federal bonus depreciation" means the deduction allowed for qualified property under Section 168(k), Internal Revenue Code.

(ii) "Qualified property" means the same as that term is defined in Section 168(k)(2), Internal Revenue Code.

(b) Subject to Subsection (6)(c), a taxpayer that claims on the taxpayer's federal income tax return a federal bonus depreciation for qualified property may subtract from unadjusted income an amount equal to the difference between:

(i) the amount of federal bonus depreciation allowed for the qualified property under federal law; and

(ii) an amount equivalent to the federal bonus depreciation that would have been allowed for the qualified property for the 2022 taxable year.

(c) (i) If a taxpayer makes a subtraction for qualified property under Subsection (6)(b) in a previous taxable year, any amount of federal bonus depreciation claimed for the qualified property on the taxpayer's federal income tax return for the current taxable year shall be added to the taxpayer's unadjusted income for the same taxable year.

(ii) A taxpayer making a subtraction under Subsection (6)(b) shall report the following information on a form prescribed by the commission:

(A) the qualified properties for which the taxpayer is making a subtraction under Subsection (6)(b); and

(B) for each qualified property described in Subsection (6)(c)(ii)(A), the amount of federal bonus depreciation allowed for the qualified property under federal law.

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

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

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

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

(b) the amount of a child's income calculated under Subsection [~~(4)~~] (5) that:

(i) a parent elects to report on the parent's federal individual income tax return for the

214 taxable year; and

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

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

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

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

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

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

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

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

234 (i) is not expended for:

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

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

239 (ii) is:

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

241 (I) who is the account owner; and

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

244 (B) used as the basis for the resident or nonresident individual who is the account

owner to claim a tax credit under Section 59-10-1017;

(e) except as provided in Subsection ~~[(5)]~~ (6), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness:

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

(A) a state other than this state;

(B) the District of Columbia;

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

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

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

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

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

(h) any adoption expense:

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

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

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

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

(i) the amount of tax paid on income attributed to the individual in accordance with Subsection 59-10-1403.2(2) that is not included in adjusted gross income; and

(j) the amount of tax paid:

(i) on income attributed to the individual and taxable in this state, that is not included in adjusted gross income;

(ii) to another state; and

(iii) that the commission determines is substantially similar to the tax imposed under Subsection 59-10-1403.2(2).

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

(a) the difference between:

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

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

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

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

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

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

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

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

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

(A) a state; or

(B) the District of Columbia; and

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

(d) the amount of a railroad retirement benefit:

307 (i) paid:
308 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
309 seq.;
310 (B) to a resident or nonresident individual; and
311 (C) for the taxable year; and
312 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
313 that resident or nonresident individual's federal individual income tax return for that taxable
314 year;
315 (e) an amount:
316 (i) received by an enrolled member of an American Indian tribe; and
317 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
318 part on that amount in accordance with:
319 (A) federal law;
320 (B) a treaty; or
321 (C) a final decision issued by a court of competent jurisdiction;
322 (f) an amount received:
323 (i) for the interest on a bond, note, or other obligation issued by an entity for which
324 state statute provides an exemption of interest on its bonds from state individual income tax;
325 (ii) by a resident or nonresident individual;
326 (iii) for the taxable year; and
327 (iv) to the extent the amount is included in adjusted gross income on the taxpayer's
328 federal income tax return for the taxable year;
329 (g) the amount of all income, including income apportioned to another state, of a
330 nonmilitary spouse of an active duty military member if:
331 (i) both the nonmilitary spouse and the active duty military member are nonresident
332 individuals;
333 (ii) the active duty military member is stationed in Utah;
334 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.
335 4001(a)(2); and
336 (iv) the income is included in adjusted gross income for federal income tax purposes
337 for the taxable year;

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

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

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

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

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

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

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

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

(B) was taxed by another state of the United States, the District of Columbia, or a possession of the United States.

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

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

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

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

(i) may not:

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

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

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

(ii) shall:

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

(B) be in writing;

(C) be signed by:

(I) the governor; and

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

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

(E) state the effective date of the agreement.

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

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

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

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

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

(4) (a) As used in this Subsection (4):

(i) "Federal bonus depreciation" means the deduction allowed for qualified property under Section 168(k), Internal Revenue Code.

(ii) "Qualified property" means the same as that term is defined in Section 168(k)(2), Internal Revenue Code.

(b) Subject to Subsection (4)(c), a taxpayer that claims on the taxpayer's federal income tax return a federal bonus depreciation for qualified property may subtract from adjusted gross income an amount equal to the difference between:

(i) the amount of federal bonus depreciation allowed for the qualified property under federal law; and

(ii) an amount equivalent to the federal bonus depreciation that would have been

400 allowed for the qualified property for the 2022 taxable year.

401 (c) (i) If a taxpayer makes a subtraction for qualified property under Subsection (4)(b)
402 in a previous taxable year, any amount of federal bonus depreciation claimed for the qualified
403 property on the taxpayer's federal income tax return for the current taxable year shall be added
404 to the taxpayer's adjusted gross income for the same taxable year.

405 (ii) A taxpayer making a subtraction under Subsection (4)(b) shall report the following
406 information on a form prescribed by the commission:

407 (A) the qualified properties for which the taxpayer is making a subtraction under
408 Subsection (4)(b); and

409 (B) for each qualified property described in Subsection (4)(c)(ii)(A), the amount of
410 federal bonus depreciation allowed for the qualified property under federal law.

411 ~~[(4)]~~ (5) (a) For purposes of this Subsection ~~[(4)]~~ (5), "Form 8814" means:

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

414 (ii) (A) a form designated by the commission in accordance with Subsection
415 ~~[(4)(a)(ii)(B)]~~ (5)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of
416 federal individual income taxes the information contained on 2000 Form 8814 is reported on a
417 form other than Form 8814; and

418 (B) for purposes of Subsection ~~[(4)(a)(ii)(A)]~~ (5)(a)(ii)(A) and in accordance with Title
419 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules
420 designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal
421 individual income taxes the information contained on 2000 Form 8814 is reported on a form
422 other than Form 8814.

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

425 (i) the lesser of:

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

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

428 (I) the child's taxable interest;

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

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

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

~~[(5)]~~ (6) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(e)(i)(A) through (D) may not be added to adjusted gross income of a resident or nonresident individual if, as annually determined by the commission:

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

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

(i) the entity; or

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

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

Section 3. Effective date.

This bill takes effect on May 1, 2024.

Section 4. Retrospective operation.

This bill has retrospective operation for a taxable year beginning on or after January 1, 2024.