

ADOPTION TAX CREDIT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Individual Income Tax Act to address income tax credits related to an adoption.

Highlighted Provisions:

This bill:

- ▶ provides a nonrefundable tax credit for adoption of a child;
- ▶ provides that the nonrefundable tax credit is in addition to the refundable tax credit for adoption of a child who has a special need;
- ▶ requires the amount of a qualified adoption expense that is reimbursed and for which the tax credit for adoption of a child is claimed to be added to adjusted gross income under certain circumstances; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for a taxable year beginning on or after January 1, 2012.

Utah Code Sections Affected:

AMENDS:

59-10-114, as last amended by Laws of Utah 2010, Chapter 6



28 **59-10-1002.2**, as last amended by Laws of Utah 2011, Chapter 302

29 **59-10-1104**, as renumbered and amended by Laws of Utah 2006, Chapter 223

30 ENACTS:

31 **59-10-1029**, Utah Code Annotated 1953



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

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

35 **59-10-114. Additions to and subtractions from adjusted gross income of an**
36 **individual.**

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

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

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

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

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

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

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

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

52 (C) the withdrawal is:

53 (I) subtracted on a return the resident or nonresident individual files under this chapter
54 for a taxable year beginning on or before December 31, 2007; or

55 (II) used as the basis for a resident or nonresident individual to claim a tax credit under
56 Section 59-10-1021;

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

- 59 (iii) an amount required to be added to adjusted gross income in accordance with
60 Subsection 31A-32a-105(5)(c);
- 61 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
62 from the account of a resident or nonresident individual who is an account owner as defined in
63 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount
64 withdrawn from the account of the resident or nonresident individual who is the account
65 owner:
- 66 (i) is not expended for:
- 67 (A) higher education costs as defined in Section 53B-8a-102; or
68 (B) a payment or distribution that qualifies as an exception to the additional tax for
69 distributions not used for educational expenses provided in Sections 529(c) and 530(d),
70 Internal Revenue Code; and
- 71 (ii) is:
- 72 (A) subtracted by the resident or nonresident individual:
- 73 (I) who is the account owner; and
74 (II) on the resident or nonresident individual's return filed under this chapter for a
75 taxable year beginning on or before December 31, 2007; or
- 76 (B) used as the basis for the resident or nonresident individual who is the account
77 owner to claim a tax credit under Section 59-10-1017;
- 78 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of
79 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other
80 evidences of indebtedness issued by one or more of the following entities:
- 81 (i) a state other than this state;
82 (ii) the District of Columbia;
83 (iii) a political subdivision of a state other than this state; or
84 (iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i) through
85 (iii);
- 86 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a
87 resident trust of income that was taxed at the trust level for federal tax purposes, but was
88 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);
- 89 (g) any distribution received by a resident beneficiary of a nonresident trust of

90 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
91 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
92 was not taxed at the trust level by any state, with undistributed distributable net income
93 considered to be distributed from the most recently accumulated undistributed distributable net
94 income; and

95 (h) any adoption expense, including qualified adoption expenses as defined in Section
96 59-10-1029:

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

99 (ii) to the extent to which the resident or nonresident individual;

100 (A) subtracts that adoption expense:

101 ~~[(A)]~~ (I) on a return filed under this chapter for a taxable year beginning on or before
102 December 31, 2007; or

103 ~~[(B)]~~ (II) from federal taxable income on a federal individual income tax return~~[-];~~ or

104 (B) claims a tax credit under Section 59-10-1029.

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

107 (a) the difference between:

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

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

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

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

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

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

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

- 121 (c) an amount received by a resident or nonresident individual or distribution received
122 by a resident or nonresident beneficiary of a resident trust:
- 123 (i) if that amount or distribution constitutes a refund of taxes imposed by:
- 124 (A) a state; or
- 125 (B) the District of Columbia; and
- 126 (ii) to the extent that amount or distribution is included in adjusted gross income for
127 that taxable year on the federal individual income tax return of the resident or nonresident
128 individual or resident or nonresident beneficiary of a resident trust;
- 129 (d) the amount of a railroad retirement benefit:
- 130 (i) paid:
- 131 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
132 seq.;
- 133 (B) to a resident or nonresident individual; and
- 134 (C) for the taxable year; and
- 135 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
136 that resident or nonresident individual's federal individual income tax return for that taxable
137 year; and
- 138 (e) an amount:
- 139 (i) received by an enrolled member of an American Indian tribe; and
- 140 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
141 part on that amount in accordance with:
- 142 (A) federal law;
- 143 (B) a treaty; or
- 144 (C) a final decision issued by a court of competent jurisdiction.
- 145 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:
- 146 (i) the taxpayer is a Ute tribal member; and
- 147 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
148 requirements of this Subsection (3).
- 149 (b) The agreement described in Subsection (3)(a):
- 150 (i) may not:
- 151 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

152 (B) provide a subtraction under this section greater than or different from the
153 subtraction described in Subsection (2)(b); or
154 (C) affect the power of the state to establish rates of taxation; and
155 (ii) shall:
156 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
157 (B) be in writing;
158 (C) be signed by:
159 (I) the governor; and
160 (II) the chair of the Business Committee of the Ute tribe;
161 (D) be conditioned on obtaining any approval required by federal law; and
162 (E) state the effective date of the agreement.
163 (c) (i) The governor shall report to the commission by no later than February 1 of each
164 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is
165 in effect.
166 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the
167 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or
168 after the January 1 following the termination of the agreement.
169 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,
170 Utah Administrative Rulemaking Act, the commission may make rules:
171 (i) for determining whether income is derived from a source within the Uintah and
172 Ouray Reservation; and
173 (ii) that are substantially similar to how adjusted gross income derived from Utah
174 sources is determined under Section 59-10-117.
175 (4) (a) For purposes of this Subsection (4), "Form 8814" means:
176 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
177 Interest and Dividends; or
178 (ii) (A) a form designated by the commission in accordance with Subsection
179 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal
180 individual income taxes the information contained on 2000 Form 8814 is reported on a form
181 other than Form 8814; and
182 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter

183 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
184 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
185 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
186 8814.

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

189 (i) the lesser of:

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

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

192 (I) the child's taxable interest;

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

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

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

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

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

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

206 (i) the entity; or

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

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

209 Section 2. Section **59-10-1002.2** is amended to read:

210 **59-10-1002.2. Apportionment of tax credits.**

211 (1) A nonresident individual or a part-year resident individual that claims a tax credit
212 in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1021, 59-10-1022,
213 59-10-1023, 59-10-1024, [or] 59-10-1028, or 59-10-1029 may only claim an apportioned

214 amount of the tax credit equal to:

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

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

217 (ii) the amount of the tax credit that the nonresident individual would have been

218 allowed to claim but for the apportionment requirements of this section; or

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

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

221 (ii) the amount of the tax credit that the part-year resident individual would have been

222 allowed to claim but for the apportionment requirements of this section.

223 (2) A nonresident estate or trust that claims a tax credit in accordance with Section

224 59-10-1017, 59-10-1020, 59-10-1022, 59-10-1024, or 59-10-1028 may only claim an

225 apportioned amount of the tax credit equal to the product of:

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

227 (b) the amount of the tax credit that the nonresident estate or trust would have been

228 allowed to claim but for the apportionment requirements of this section.

229 Section 3. Section **59-10-1029** is enacted to read:

230 **59-10-1029. Nonrefundable tax credit for qualified adoption expenses.**

231 (1) As used in this section:

232 (a) "Eligible child" is as defined in Section 36C, Internal Revenue Code.

233 (b) "Qualified adoption expenses" is as defined in Section 36C, Internal Revenue Code.

234 (2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of
235 this section, for a taxable year beginning on or after January 1, 2012, a claimant who adopts an
236 eligible child may claim a nonrefundable tax credit against taxes otherwise due under this
237 chapter on the claimant's return under this chapter for the taxable year if the claimant's
238 qualified adoption expenses for the adoption are at least \$25,000.

239 (3) The amount of the tax credit under this section that may be claimed on a return for
240 a taxable year, regardless of filing status, is an amount equal to the product of:

241 (a) the claimant's qualified adoption expenses with respect to the eligible child the
242 claimant adopts; and

243 (b) 5%.

244 (4) A claimant may claim a tax credit under this section for the adoption of an eligible

245 child for which a court issues an order granting the adoption on or after January 1, 2012.

246 (5) Subject to Subsection (6), a claimant may claim a tax credit under this section for
247 the taxable year for which the court issues the order described in Subsection (4) granting the
248 adoption.

249 (6) A claimant may carry forward a tax credit under this section for a period that does
250 not exceed the next five taxable years if:

251 (a) the claimant is allowed to claim a tax credit under this section for a taxable year;
252 and

253 (b) the amount of the tax credit exceeds the claimant's tax liability under this chapter
254 for that taxable year.

255 (7) Nothing in this section may affect the ability of a claimant who adopts an eligible
256 child to receive adoption assistance under Section 62A-4a-907.

257 Section 4. Section **59-10-1104** is amended to read:

258 **59-10-1104. Tax credit for adoption of a child who has a special need.**

259 (1) As used in this section, a "child who has a special need" means a child who meets
260 at least one of the following conditions:

261 (a) the child is five years of age or older;

262 (b) the child:

263 (i) is under the age of 18; and

264 (ii) has a physical, emotional, or mental disability; or

265 (c) the child is a member of a sibling group placed together for adoption.

266 (2) For taxable years beginning on or after January 1, 2005, a claimant who adopts in
267 this state a child who has a special need may claim on the claimant's [~~individual income tax~~]
268 return under this chapter for the taxable year a refundable tax credit of \$1,000 against taxes
269 otherwise due under this chapter for:

270 (a) adoptions for which a court issues an order granting the adoption on or after
271 January 1, 2005;

272 (b) the taxable year during which a court issues an order granting the adoption; and

273 (c) each child who has a special need whom the claimant adopts.

274 (3) The credit provided for in this section may not be carried forward or carried back.

275 (4) Nothing in this section shall affect the ability of any claimant who adopts a child

276 who has a special need to receive adoption assistance under Section 62A-4a-907.

277 (5) A claimant may claim a tax credit under this section in addition to claiming a tax
278 credit under Section 59-10-1029.

279 Section 5. **Retrospective operation.**

280 This bill has retrospective operation for a taxable year beginning on or after January 1,
281 2012.

Legislative Review Note
as of 1-25-12 1:08 PM

Office of Legislative Research and General Counsel