

1 **AMENDMENTS TO INDIVIDUAL INCOME TAX**

2 **DEFINITION OF RESIDENT INDIVIDUAL**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5

6 **LONG TITLE**

7 **General Description:**

8 This bill amends the Individual Income Tax Act to modify the definition of resident
9 individual.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the definition of resident individual to address the circumstances under
13 which an individual who is not domiciled in the state is a resident individual by
14 providing that if the individual maintains a place of abode in the state, the place of
15 abode is not required to be permanent; and
16 ▶ making technical and conforming changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill has retrospective operation for a taxable year beginning on or after January 1,
21 2010.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **59-10-103**, as last amended by Laws of Utah 2009, Chapter 312

25

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

27 Section 1. Section **59-10-103** is amended to read:

28 **59-10-103. Definitions.**

29 (1) As used in this chapter:

30 (a) "Adjusted gross income":

31 (i) for a resident or nonresident individual, is as defined in Section 62, Internal

- 32 Revenue Code; or
- 33 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),
- 34 Internal Revenue Code.
- 35 (b) "Corporation" includes:
- 36 (i) an association;
- 37 (ii) a joint stock company; and
- 38 (iii) an insurance company.
- 39 (c) "Distributable net income" is as defined in Section 643, Internal Revenue Code.
- 40 (d) "Employee" is as defined in Section 59-10-401.
- 41 (e) "Employer" is as defined in Section 59-10-401.
- 42 (f) "Federal taxable income":
- 43 (i) for a resident or nonresident individual, means taxable income as defined by Section
- 44 63, Internal Revenue Code; or
- 45 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
- 46 (b), Internal Revenue Code.
- 47 (g) "Fiduciary" means:
- 48 (i) a guardian;
- 49 (ii) a trustee;
- 50 (iii) an executor;
- 51 (iv) an administrator;
- 52 (v) a receiver;
- 53 (vi) a conservator; or
- 54 (vii) any person acting in any fiduciary capacity for any individual.
- 55 (h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).
- 56 (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
- 57 homesteaded land that was held to have been diminished from the Uintah and Ouray
- 58 Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).
- 59 (j) "Individual" means a natural person and includes aliens and minors.
- 60 (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate
- 61 all or part of the trust without the consent of a person who has a substantial beneficial interest
- 62 in the trust and the interest would be adversely affected by the exercise of the settlor's power to

63 revoke or terminate all or part of the trust.

64 (l) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.

65 (m) "Nonresident individual" means an individual who is not a resident of this state.

66 (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
67 resident estate or trust.

68 (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
69 unincorporated organization:

70 (A) through or by means of which any business, financial operation, or venture is
71 carried on; and

72 (B) which is not, within the meaning of this chapter:

73 (I) a trust;

74 (II) an estate; or

75 (III) a corporation.

76 (ii) "Partnership" does not include any organization not included under the definition of
77 "partnership" in Section 761, Internal Revenue Code.

78 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
79 organization described in Subsection (1)(o)(i).

80 (p) "Qualified nongrantor charitable lead trust" means a trust:

81 (i) that is irrevocable;

82 (ii) that has a trust term measured by:

83 (A) a fixed term of years; or

84 (B) the life of a person living on the day on which the trust is created;

85 (iii) under which:

86 (A) a portion of the value of the trust assets is distributed during the trust term:

87 (I) to an organization described in Section 170(c), Internal Revenue Code; and

88 (II) as a:

89 (Aa) guaranteed annuity interest; or

90 (Bb) unitrust interest; and

91 (B) assets remaining in the trust at the termination of the trust term are distributed to a
92 beneficiary:

93 (I) designated in the trust; and

- 94 (II) that is not an organization described in Section 170(c), Internal Revenue Code;
- 95 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue
- 96 Code; and
- 97 (v) under which the grantor of the trust is not treated as the owner of any portion of the
- 98 trust for federal income tax purposes.
- 99 (q) (i) "Resident individual" means:
- 100 (A) an individual who is domiciled in this state for any period of time during the
- 101 taxable year, but only for the duration of the period during which the individual is domiciled in
- 102 this state; or
- 103 (B) an individual who is not domiciled in this state but:
- 104 (I) maintains a [permanent] place of abode in this state; and
- 105 (II) spends in the aggregate 183 or more days of the taxable year in this state.
- 106 (ii) For purposes of Subsection (1)(q)(i)(B), a fraction of a calendar day shall be
- 107 counted as a whole day.
- 108 (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.
- 109 (s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.
- 110 (t) "State income tax percentage for a nonresident estate or trust" means a percentage
- 111 equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the
- 112 nonresident estate's or trust's total adjusted gross income for that taxable year after making the
- 113 adjustments required by:
- 114 (i) Section 59-10-202;
- 115 (ii) Section 59-10-207;
- 116 (iii) Section 59-10-209.1; or
- 117 (iv) Section 59-10-210.
- 118 (u) "State income tax percentage for a nonresident individual" means a percentage
- 119 equal to a nonresident individual's state taxable income for the taxable year divided by the
- 120 difference between:
- 121 (i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross
- 122 income for that taxable year, after making the:
- 123 (A) additions and subtractions required by Section 59-10-114; and
- 124 (B) adjustments required by Section 59-10-115; and

125 (ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember,
126 the compensation the servicemember receives for military service if the servicemember is
127 serving in compliance with military orders.

128 (v) "State income tax percentage for a part-year resident individual" means, for a
129 taxable year, a fraction:

130 (i) the numerator of which is the sum of:

131 (A) subject to Section 59-10-1404.5, for the time period during the taxable year that the
132 part-year resident individual is a resident, the part-year resident individual's total adjusted gross
133 income for that time period, after making the:

134 (I) additions and subtractions required by Section 59-10-114; and

135 (II) adjustments required by Section 59-10-115; and

136 (B) for the time period during the taxable year that the part-year resident individual is a
137 nonresident, an amount calculated by:

138 (I) determining the part-year resident individual's adjusted gross income for that time
139 period, after making the:

140 (Aa) additions and subtractions required by Section 59-10-114; and

141 (Ab) adjustments required by Section 59-10-115; and

142 (II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I)
143 that is derived from Utah sources in accordance with Section 59-10-117; and

144 (ii) the denominator of which is the difference between:

145 (A) the part-year resident individual's total adjusted gross income for that taxable year,
146 after making the:

147 (I) additions and subtractions required by Section 59-10-114; and

148 (II) adjustments required by Section 59-10-115; and

149 (B) if the part-year resident individual is a servicemember, any compensation the
150 servicemember receives for military service during the portion of the taxable year that the
151 servicemember is a nonresident if the servicemember is serving in compliance with military
152 orders.

153 (w) "Taxable income" or "state taxable income":

154 (i) subject to Section 59-10-1404.5, for a resident individual, means the resident
155 individual's adjusted gross income after making the:

- 156 (A) additions and subtractions required by Section 59-10-114; and
- 157 (B) adjustments required by Section 59-10-115;
- 158 (ii) for a nonresident individual, is an amount calculated by:
- 159 (A) determining the nonresident individual's adjusted gross income for the taxable
- 160 year, after making the:
- 161 (I) additions and subtractions required by Section 59-10-114; and
- 162 (II) adjustments required by Section 59-10-115; and
- 163 (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A)
- 164 that is derived from Utah sources in accordance with Section 59-10-117;
- 165 (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and
- 166 (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.
- 167 (x) "Taxpayer" means any individual, estate, trust, or beneficiary of an estate or trust,
- 168 that has income subject in whole or part to the tax imposed by this chapter.
- 169 (y) "Trust term" means a time period:
- 170 (i) beginning on the day on which a qualified nongrantor charitable lead trust is
- 171 created; and
- 172 (ii) ending on the day on which the qualified nongrantor charitable lead trust described
- 173 in Subsection (1)(y)(i) terminates.
- 174 (z) "Uintah and Ouray Reservation" means the lands recognized as being included
- 175 within the Uintah and Ouray Reservation in:
- 176 (i) Hagen v. Utah, 510 U.S. 399 (1994); and
- 177 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).
- 178 (aa) "Unadjusted income" means an amount equal to the difference between:
- 179 (i) the total income required to be reported by a resident or nonresident estate or trust
- 180 on the resident or nonresident estate's or trust's federal income tax return for estates and trusts
- 181 for the taxable year; and
- 182 (ii) the sum of the following:
- 183 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:
- 184 (I) for administering the resident or nonresident estate or trust; and
- 185 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or
- 186 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable

187 year;

188 (B) the income distribution deduction that a resident or nonresident estate or trust
189 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or
190 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
191 year;

192 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for
193 estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as
194 allowed on the resident or nonresident estate's or trust's federal income tax return for estates
195 and trusts for the taxable year; and

196 (D) the amount that a resident or nonresident estate or trust deducts as a personal
197 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or
198 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
199 year.

200 (bb) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

201 (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute
202 Indian Tribe of the Uintah and Ouray Reservation.

203 (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

204 (ee) "Wages" is as defined in Section 59-10-401.

205 (2) (a) Any term used in this chapter has the same meaning as when used in
206 comparable context in the laws of the United States relating to federal income taxes unless a
207 different meaning is clearly required.

208 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
209 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
210 federal income taxes that are in effect for the taxable year.

211 (c) Any reference to a specific section of the Internal Revenue Code or other provision
212 of the laws of the United States relating to federal income taxes shall include any
213 corresponding or comparable provisions of the Internal Revenue Code as amended,
214 redesignated, or reenacted.

215 Section 2. **Retrospective operation.**

216 This bill has retrospective operation for a taxable year beginning on or after January 1,
217 2010.

