

1 **APPORTIONMENT OF BUSINESS INCOME AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill addresses the apportionment of business income for purposes of corporate
8 franchise and income taxes.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ addresses the apportionment of business income for purposes of corporate franchise
- 12 and income taxes;
- 13 ▶ repeals obsolete language; and
- 14 ▶ makes technical and conforming changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill provides retrospective operation.

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **59-7-110**, as last amended by Laws of Utah 2010, Chapter 155

22 **59-7-311**, as last amended by Laws of Utah 2010, Chapter 155

23

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

25 Section 1. Section **59-7-110** is amended to read:

26 **59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.**

27 (1) The amount of Utah net loss that shall be carried back or forward to offset income
28 of another taxable year is determined as provided in this section.

29 (2) (a) Subject to the other provisions of this section, a Utah net loss from a taxable
30 year beginning before January 1, 1994, shall be carried back three taxable years preceding the
31 taxable year of the loss and any remaining loss shall be carried forward five taxable years
32 following the taxable year of the loss.

33 (b) (i) Subject to the other provisions of this section, a Utah net loss from a taxable
34 year beginning on or after January 1, 1994, may be carried back three taxable years preceding
35 the taxable year of the loss and carried forward 15 taxable years following the taxable year of
36 the loss.

37 (ii) If an election is made to forego the federal net operating loss carryback, a Utah net
38 loss is not eligible to be carried back unless an election is made for state purposes.

39 (3) A Utah net loss shall be carried to the earliest eligible year for which the Utah
40 taxable income before net loss deduction, minus Utah net losses from previous years that were
41 applied or required to be applied to offset income, is not less than zero.

42 (4) (a) Except as provided in Subsection (4)(b), the amount of Utah net loss that shall
43 be carried to the year identified in Subsection (3) is the lesser of:

44 (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that
45 were carried to previous years; or

46 (ii) the remaining Utah taxable income before net loss deduction of the year identified
47 in Subsection (3) after deduction of Utah net losses from previous years that were carried or
48 required to be carried to the year identified in Subsection (3).

49 (b) (i) The amount of Utah net loss carried back from a taxable year may not exceed
50 \$1,000,000 in Utah taxable income for each return filed under this chapter in a taxable year.

51 (ii) A Utah net loss in excess of \$1,000,000 may be carried forward.

52 (iii) A remaining Utah net loss shall be available to be carried to one or more taxable
53 years in accordance with this section.

54 (5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of
55 another corporation may not deduct any net loss incurred by the acquired corporation prior to
56 the date of acquisition.

57 (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of
58 the state of incorporation.

59 (b) An acquired corporation may deduct the acquired corporation's net losses incurred
60 before the date of acquisition against the acquired corporation's separate income as calculated
61 under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or
62 business substantially the same as that conducted before the acquisition.

63 (6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation

64 that is acquired by a unitary group may deduct is calculated by:

65 (a) subject to Subsection (7):

66 (i) except as provided in Subsection (6)(a)(ii), calculating the sum of:

67 (A) an amount determined by dividing the average value of the acquired corporation's
68 real and tangible personal property owned or rented and used in this state during the taxable
69 year by the average value of all of the unitary group's real and tangible personal property owned
70 or rented and used during the taxable year;

71 (B) an amount determined by dividing the total amount paid in this state during the
72 taxable year by the acquired corporation for compensation by the total compensation paid
73 everywhere by the unitary group during the taxable year; and

74 (C) an amount determined by:

75 (I) dividing the total sales of the acquired corporation in this state during the taxable
76 year by the total sales of the unitary group everywhere during the taxable year; and

77 (II) ~~[(Aa)]~~ if the unitary group elects to calculate the fraction for apportioning business
78 income to this state using the method described in Subsection 59-7-311(2)~~[(d)]~~(b), multiplying
79 the amount calculated under Subsection (6)(a)(i)(C)(I) by two; or

80 ~~[(Bb) if the unitary group is required to calculate the fraction for apportioning business
81 income to this state using the method described in Subsection 59-7-311(3)(a), multiplying the
82 amount calculated under Subsection (6)(a)(i)(C)(I) by four; or]~~

83 ~~[(Cc) if the unitary group is required to calculate the fraction for apportioning business
84 income to this state using the method described in Subsection 59-7-311(3)(b), multiplying the
85 amount calculated under Subsection (6)(a)(i)(C)(I) by 10; or]~~

86 (ii) if the unitary group is required to calculate the fraction for apportioning business
87 income to this state using the method described in Subsection 59-7-311(3)~~[(e)]~~, calculating an
88 amount determined by dividing the total sales of the acquired corporation in this state during
89 the taxable year by the total sales of the unitary group everywhere during the taxable year;

90 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of
91 the fraction the unitary group uses to apportion business income to this state:

92 (i) for that taxable year; and

93 (ii) in accordance with Section 59-7-311;

94 (c) multiplying the amount calculated under Subsection (6)(b) by the business income

95 of the unitary group for the taxable year that is subject to apportionment under Section
96 59-7-311; and

97 (d) calculating the sum of:

98 (i) the amount calculated under Subsection (6)(c); and

99 (ii) the following amounts allocable to the acquired corporation for the taxable year:

100 (A) nonbusiness income allocable to this state; or

101 (B) nonbusiness loss allocable to this state.

102 (7) The amounts calculated under Subsection (6)(a) shall be derived in the same
103 manner as those amounts are derived for purposes of apportioning the unitary group's business
104 income before deducting the net loss, including a modification made in accordance with
105 Section 59-7-320.

106 Section 2. Section **59-7-311** is amended to read:

107 **59-7-311. Method of apportionment of business income.**

108 (1) For a taxable year, all business income shall be apportioned to this state by
109 multiplying the business income by a fraction calculated as provided in this section.

110 ~~[(2)(a) Subject to the other provisions of this part, for the taxable year that begins on~~
111 ~~or after January 1, 2010, but begins on or before December 31, 2010, a taxpayer, including a~~
112 ~~sales factor weighted taxpayer, shall elect to calculate the fraction for apportioning business~~
113 ~~income to this state under this section using:]~~

114 ~~[(i) the method described in Subsection (2)(c); or]~~

115 ~~[(ii) the method described in Subsection (2)(d).]~~

116 ~~[(b) Subject to the other provisions of this part, for a taxable year that begins on or after~~
117 ~~January 1, 2011, a taxpayer, except for a sales factor weighted taxpayer, shall elect to calculate~~
118 ~~the fraction for apportioning business income to this state under this section using:]~~

119 ~~[(i) the method described in Subsection (2)(c); or]~~

120 ~~[(ii) the method described in Subsection (2)(d).]~~

121 ~~[(c) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a)~~
122 ~~or (b) may elect to calculate the fraction for apportioning business income as follows:]~~

123 ~~[(i) the numerator of the fraction is the sum of:]~~

124 ~~[(A) the property factor as calculated under Section 59-7-312;]~~

125 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

126 ~~[(C) the sales factor as calculated under Section 59-7-317; and]~~
 127 ~~[(ii) the denominator of the fraction is three.]~~
 128 ~~[(d) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a)~~
 129 ~~or (b) may elect to calculate the fraction for apportioning business income as follows:]~~
 130 ~~[(i) the numerator of the fraction is the sum of:]~~
 131 ~~[(A) the property factor as calculated under Section 59-7-312;]~~
 132 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~
 133 ~~[(C) the product of:]~~
 134 ~~[(F) the sales factor as calculated under Section 59-7-317; and]~~
 135 ~~[(H) two; and]~~
 136 ~~[(ii) the denominator of the fraction is four.]~~
 137 ~~[(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
 138 ~~the commission may make rules providing procedures for a taxpayer described in Subsection~~
 139 ~~(2)(a) or (b) to make the election required by this Subsection (2).]~~
 140 ~~[(3) (a) Subject to the other provisions of this part, for the taxable year that begins on~~
 141 ~~or after January 1, 2011, but begins on or before December 31, 2011, a sales factor weighted~~
 142 ~~taxpayer shall calculate the fraction for apportioning business income to this state as follows:]~~
 143 ~~[(i) the numerator of the fraction is the sum of:]~~
 144 ~~[(A) the property factor as calculated under Section 59-7-312;]~~
 145 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~
 146 ~~[(C) the product of:]~~
 147 ~~[(F) the sales factor as calculated under Section 59-7-317; and]~~
 148 ~~[(H) four; and]~~
 149 ~~[(ii) the denominator of the fraction is six.]~~
 150 ~~[(b) Subject to the other provisions of this part, for the taxable year that begins on or~~
 151 ~~after January 1, 2012, but begins on or before December 31, 2012, a sales factor weighted~~
 152 ~~taxpayer shall calculate the fraction for apportioning business income to this state as follows:]~~
 153 ~~[(i) the numerator of the fraction is the sum of:]~~
 154 ~~[(A) the property factor as calculated under Section 59-7-312;]~~
 155 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~
 156 ~~[(C) the product of:]~~

157 ~~[(F) the sales factor as calculated under Section 59-7-317; and]~~

158 ~~[(H) 10; and]~~

159 ~~[(ii) the denominator of the fraction is 12.]~~

160 (2) Subject to the other provisions of this part, a taxpayer, except for a sales factor
 161 weighted taxpayer, shall calculate the fraction for apportioning business income to this state
 162 using one of the following fractions:

163 (a) a fraction where:

164 (i) the numerator of the fraction is the sum of:

165 (A) the property factor as calculated under Section 59-7-312;

166 (B) the payroll factor as calculated under Section 59-7-315; and

167 (C) the sales factor as calculated under Section 59-7-317; and

168 (ii) the denominator of the fraction is three; or

169 (b) a fraction where:

170 (i) the numerator of the fraction is the sum of:

171 (A) the property factor as calculated under Section 59-7-312;

172 (B) the payroll factor as calculated under Section 59-7-315; and

173 (C) the sales factor as calculated under Section 59-7-317 multiplied by two; and

174 (ii) the denominator of the fraction is four.

175 ~~[(~~e~~) (3) Subject to the other provisions of this part, [for a taxable year that begins on or~~
 176 ~~after January 1, 2013,] a sales factor weighted taxpayer shall calculate the fraction for~~
 177 ~~apportioning business income to this state as follows:~~

178 ~~[(~~f~~) (a) the numerator of the fraction is the sales factor as calculated under Section~~
 179 ~~59-7-317; and~~

180 ~~[(~~g~~) (b) the denominator of the fraction is one.~~

181 (4) If a taxpayer calculates the fraction for apportioning business income to this state
 182 using a method described in this section:

183 (a) the taxpayer shall determine the method for calculating the fraction for apportioning
 184 business income to this state under this section on or before the due date for filing the
 185 taxpayer's return under this chapter for the taxable year, including extensions; and

186 (b) the method described in Subsection (4)(a) is in effect for the time period:

187 (i) beginning on the first day of the taxpayer's taxable year for which the taxpayer

188 makes the determination described in Subsection (4)(a); and

189 (ii) ends on the last day of the taxable year described in Subsection (4)(b)(i).

190 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
191 commission may make rules providing procedures for a taxpayer to make the election required
192 by Subsection (2).

193 Section 3. **Retrospective operation.**

194 This bill has retrospective operation for a taxable year beginning on or after January 1,
195 2016.