



UTAH TAX REVIEW COMMISSION

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2016 Report of the Utah Tax Review Commission

November 16, 2016



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November 16, 2016

The Honorable Gary R. Herbert
Governor of Utah
State Capitol
Salt Lake City, Utah

Senator Deidre M. Henderson, Senate Chair
Representative Daniel McCay, House Chair
Revenue and Taxation Interim Committee
State Capitol
Salt Lake City, Utah

Re: Report of the Utah Tax Review Commission

Dear Governor Herbert, Senator Henderson, and Representative McCay:

The Utah Tax Review Commission (TRC) provides recommendations to the Legislature and Governor regarding Utah's state and local tax system. This past year, as requested by the Legislative Management Committee and Governor, we have reviewed the following issues:

1. **Single Sales Factor** – Should Utah expand or adopt a “single sales factor” apportionment regimen for all companies, create an electable single sales factor, or maintain the status quo for business apportionable income?
2. **Three Year Economic Life – Sales and Use Tax Exemption** – A study of the economic benefits of removing the three-year economic life requirement under the sales and use tax exemption for certain manufacturing equipment and machinery.
3. **Pass-Through Entity Withholding Refund** – Should Utah allow for a refund of an upper tier pass-through entity by a lower tier pass-through entity?

Utah's Overall Business Tax Climate and Perspectives on the State Corporate Income Tax

To help provide a better perspective on how these issues relate to Utah's overall tax climate for businesses, the TRC received testimony from national experts in tax policy and business climate. These experts presented information on how Utah compares to other states in state-local tax burden, state tax costs of doing business, and state business tax climate.

An expert witness from the Tax Foundation, which is based in Washington, D.C., noted the following:

- nearly all states with a state corporate income tax will eventually adopt a single sales factor apportionment formula;
- two timing options for Utah to adopt a single sales factor apportionment option would be to use a revenue trigger, which activates the change when a certain revenue threshold is met, or to adopt the change after a certain number of other states have also adopted this option;

- removing the sales tax on business inputs would likely result in long-term economic benefits to the state, while changing to single sales factor apportionment would likely provide a short-term boost;
- the ideal sales tax structure is to avoid double taxation, have a broad base that includes all final purchases, and have a low rate;
- Utah is only one of two states with both an individual income tax and sales tax that consistently ranks in the top ten states for overall business climate, as measured by the Tax Foundation;
- there are many positive aspects of Utah's tax system, including its effective administration;
- Utah should continue to evaluate the effectiveness of incentives and consider the future of state corporate income taxes, state sales taxes, and federal aid reliance; and
- the best tax policy is to broaden the tax base and keep tax rates low.

Another expert witness provided additional perspectives on Utah's economy and on state corporate income taxes generally. He told the TRC that:

- if the ability of a taxpayer to use the single sales factor formula induces additional capital investment and hiring, then Utah will forgo this new investment and employment growth by not changing corporate tax policy;
- Utah's adoption of a single sales factor apportionment formula will only have a strong inducement effect if Utah does so before other states;
- Utah leads the West in economic growth;
- the economic incidence of the corporate income tax is uncertain;
- taxes do influence economic location decisions and economic development in regions, states, and communities, but the magnitude of that effect is uncertain;
- Utah has the lowest per pupil public education expenditures in the nation, so changes to corporate tax policy should be considered in light of how Utah would make up for the foregone revenue;
- if the state corporate income tax burden were reduced, it is possible that a corporation would increase employee wages;
- taxpayer responses to tax changes are uneven and there is a lag between a change in tax policy meant to induce certain behavior and the behavior actually changing; and
- Utah should consider eliminating its state corporate income tax and replacing the revenue with another tax source, possibly property taxes or personal income taxes.

Allowing All Taxpayers to Use the Single Sales Factor Apportionment Formula

Background – Current Utah Law

Utah imposes a tax rate of 5% on state taxable income of corporations. In FY 2016, this tax yielded \$338 million in revenue, about 10% less than the FY 2015 revenue yield of \$374 million. The state corporate income tax is a volatile source of revenue with yields exceeding \$400 million in FY 2007 and 2008 and dropping to just over \$250 million in FY 2009. Two-thirds of the revenue is paid by corporations whose Utah business presence is 5% or less of its total business presence. As with all taxes on income, revenues from the state corporate income tax are used to support the state's public and higher education systems.

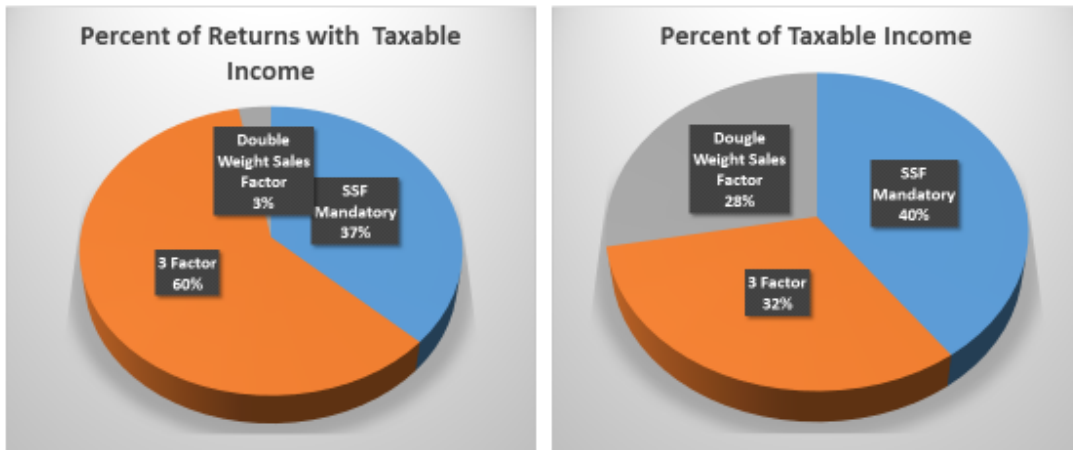
Under Utah's corporate income tax, a taxpayer generally uses one of the following three formulas when apportioning taxable income between the states in which it conducts business:

1. equally weighting the taxpayer's sales, payroll, and property;
2. double weighting the taxpayer's sales, but also including payroll and property; and
3. placing a single weight on the taxpayer's sales within the state, fully excluding payroll and property within state.

(See Tab A for a flowchart showing how a taxpayer elects to use one of these apportionment options.)

As shown in the graph below, about one-third of taxpayers with taxable income in 2014 were required to use the single sales factor apportionment formula with the rest being able to elect between using an equally-weighted three factor or double weighted sales factor apportionment formula.

Apportionment Formula Used by State Corporate Income Taxpayers (2014 tax year for Utah corporate income tax filers)



OLRGC Prepared by Office of Legislative Research and General Counsel. Source: Utah State Tax Commission

Current law prevents taxpayers in certain industries from using a single sales factor apportionment formula. These industries include:

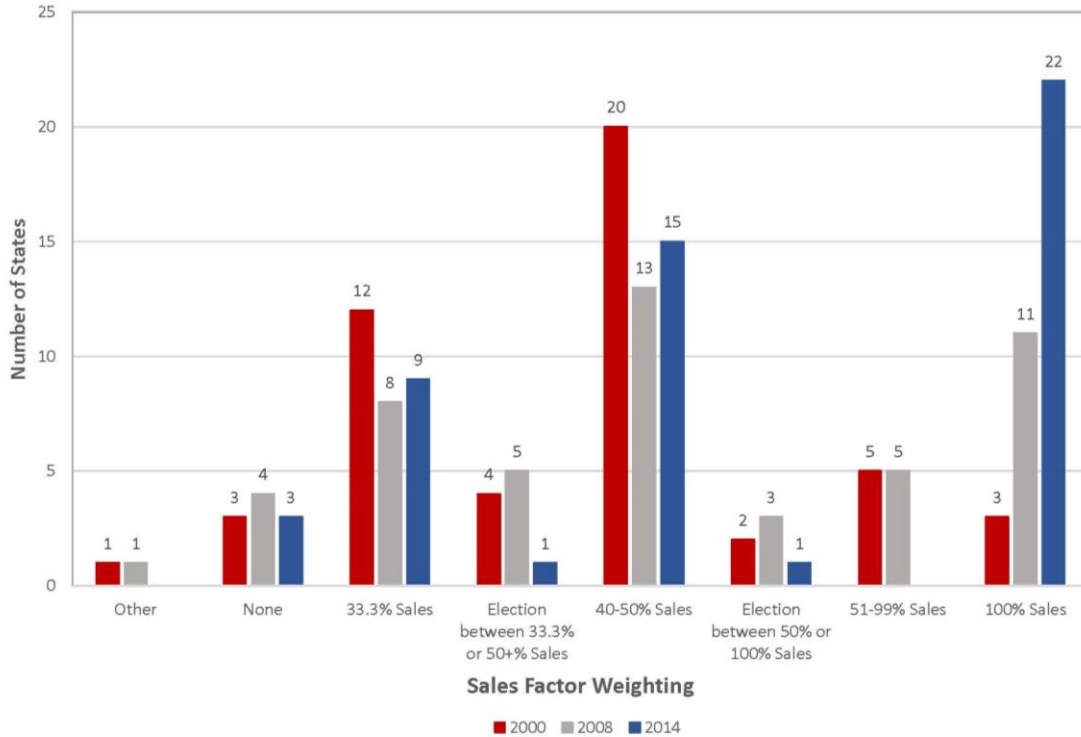
- Mining;
- Natural gas distribution;
- Manufacturing (except for certain computer and electronic product manufacturing);
- Transportation and Warehousing;
- Information (except for NAICS Subsector 519, Other Information Services); and
- Finance and Insurance

During its 2016 General Session, the Legislature considered allowing all taxpayers the option of choosing one of the above apportionment formula options (H.B. 61, as introduced). However, due to a potential ongoing revenue loss of \$132 million, the bill was scaled back to include only a limited category of taxpayers.

Apportionment in Other Western States and Nationwide Trends

As shown in the following graph, the trend among states has been shifting to either allowing or requiring a taxpayer to use the single sales factor apportionment formula.

Apportionment of Corporate Income 2000, 2008, and 2014



Prepared by the Office of Legislative Research and General Counsel

Data Sources
2000 and 2008: Federation of Tax Administrators
2014: Tax Foundation

(For a map showing how all states apportionment business income under their state corporate income tax, see the map under Tab B.)

TRC Review and Action

In conducting its review of this issue, the TRC received extensive public testimony from individuals and organizations concerned with this issue, including the Utah Taxpayers Association, Salt Lake Area Chamber of Commerce, Utah Education Association, Utah Association of Certified Public Accountants, Sutherland Institute, Nucor Steel, Utah Bankers Association, and Voices for Utah Children. The TRC also received staff reports on apportionment trends in other states, a review of the academic literature on the effects of a state adopting a single sales factor apportionment formula, and a presentation using dynamic fiscal note analysis from the Office of the Legislative Fiscal Analyst (LFA) on possible revenue effects. The LFA reported that if a strong business response occurs due to the state adopting an optional single sales factor apportionment formula, which includes not only the savings from the tax cut but also induced additional investment, then the LFA estimated, by FY 2026, the change would result in a net positive \$5.5 million in General Fund and Education Fund revenue.

After considering this information and testimony, TRC members expressed the following with regards to recommending that additional taxpayers be allowed to use a single sales factor apportionment formula.

- The TRC received testimony, and the TRC agrees, that a change from the traditional three factor apportionment formula to a single sales factor apportionment formula will be needed to remain competitive with other states in the Western United States.

- The TRC does not believe there is currently an urgent need to change from the three factor formula to a single sales factor formula.
- If/when the Legislature changes the apportionment factor from a three factor formula to a single sales factor formula, the TRC recommends making the single sales factor formula nonelective. The TRC believes that an elective apportionment formula induces too much tax gamesmanship and is poor public policy.
- The TRC discussed a phase-in approach from the current three factor formula to the single sales factor formula as a way to address the revenue lost by changing the apportionment rules.
- The TRC received testimony from businesses that have either recently relocated to Utah, or are considering relocating, that emphasized the need for a well-educated workforce and expressed concern over Utah’s relatively low per-pupil funding.
- The TRC is skeptical that a change to apportionment alone will induce additional investment in plant capacity, equipment, and payroll.
- The TRC received testimony that Utah may, at some point, be disadvantaged as a place to do business if it does not adopt a single sales factor apportionment formula when compared to other states in the Western region.
- The TRC recognizes that when businesses operate across state lines with states utilizing different apportionment formulas then situations are created where businesses are taxed on more than 100% of their income.

The TRC has no draft legislation regarding this issue at this time. The TRC does recommend monitoring apportionment formulas in other states and preparing to eventually move to a single sales factor apportionment formula. However, if the Legislature decides to allow additional taxpayers to use the single sales factor apportionment option, the consensus of the TRC is that a single sales factor be nonelective.

Eliminating the Three-Year Economic Life Requirement Under the Manufacturing Sales Tax Exemption

Background

Current law provides that the sale of machinery, equipment, or normal operating repair or replacement parts is exempt from the sales tax if products sold have an economic life of three or more years and are used in the manufacturing process or are used by a scrap recycler. This exemption is also generally available to businesses engaged in mining, mining related activities, and web search portals. (See Tab C for the current exemption.)

During its 2016 General Session, the Legislature considered, but did not pass, H.B. 180, “Sales and Use Tax Amendments,” which would have removed the three-year life requirement.

TRC Review and Action

As part of its review the TRC received the following information:

- a 50-state review of the manufacturing sales tax exemption (Tab D);
- a summary of the seven studies conducted between 1984 and 2011 regarding the effectiveness of the exemption;
- information on the trends in the manufacturing industry in Utah;
- a 50-state review of selected manufacturing activity measures and whether the state exempts from its sales tax machinery, equipment, and replacement parts used in the manufacturing process; and

- a dynamic fiscal analysis from the LFA on the investment, employment, and revenue effects of removing the three-year economic life requirement.

The TRC also received testimony from the Utah Taxpayers Association regarding this issue.

In its deliberations, several TRC members expressed support for removing the three-year economic life requirement. These members expressed their support of exempting business input and imposing the sales tax more broadly on final consumption.

The TRC did not adopt a formal recommendation on this issue.

Withholding of Individual Income Taxes by Pass-Through Entities

Background

For tax purposes, a business may choose to be formed as one of various entities, including a C corporation, S corporation, partnership, or sole proprietorship. Nationally, the sole proprietorship is the most common form of business enterprise, followed by S corporations and partnerships. Businesses organized as C corporations are subject to tax at the entity level with the owners also subject to tax on subsequent distributions of income from the corporation. Businesses organized as S corporations and partnerships are not subject to tax at the entity level but rather “pass-through” income to the owner or partner who is ultimately responsible for the tax. This is why they are called “pass-through entities.” In Utah, about 100,000 income tax returns are filed by pass-through entity taxpayers with about 10,000 of these taxpayers having Utah sourced income passed through to nonresident owners or eventual owners.

During its 2009 General Session, the Legislature enacted S.B. 23, “Income Taxation of Pass-Through Entities.” Among other things, this bill required a pass-through entity with Utah sourced income to withhold and remit to the Utah State Tax Commission (USTC), 5% of the income passed through to a nonresident individual owner or entity. In a subsequent session, the Legislature modified the requirement by allowing a pass-through entity to elect a waiver of the withholding requirement if the upper-tier pass-through entity and lower-tier entity taxpayer have the same tax year. The upper-tier pass-through entity simply did not remit withholding on behalf of lower-tier owners.

Governor Herbert asked the TRC to review the equity issues surrounding the disparate treatment of pass-through entities and pass-through entity taxpayers who do and do not have tax years that align with a pass-through entity in which they have an ownership interest.

TRC Review and Action

The TRC received an overview of this issue from the USTC and industry representatives. Initially, the USTC proposed three possible solutions:

1. adopt a refund process that would be available to pass-through entities of withholding in excess of 5% of Utah source income;
2. adopt a refundable credit that is claimable on a pass-through entity return of withholding in excess of 5% of Utah source income; or
3. allow a pass-through entity with a tax year different from that of a pass-through entity taxpayer to obtain a waiver of the withholding requirement.

The TRC chair and staff met with the USTC and industry representatives to develop draft legislation responsive to industry’s requested change. It should be noted that industry’s change is a departure from

current law even for pass-through entities sharing calendar year ends. Currently, there is no refund mechanism for any pass-through entity but rather a withholding waiver. A withholding waiver eliminates the need for a pass-through entity to remit withholding to the state and thus eliminate the need for a lower-tier entity to request a refund. A refund process would put the state in the position of collecting taxes from upper-tier partnerships and refunding the withholding to a different lower-tier entity. Through the collaborative process with the USTC and industry, it became apparent that the USTC would face significant risk of fraud if legislation were passed allowing for a refund mechanism. The risk of fraud can be mitigated by the USTC initiating an extensive audit process for each refund request and limiting refunds to only the small population of returns possessing withholdings greater than \$250,000.

At its November 10, 2016, meeting, the TRC considered draft legislation “Pass-Through Entity Amendments” (Tab E). This draft proposal would create a process for a pass-through entity with a different taxable year than the pass-through entity that withheld and remitted the tax to obtain a refund of qualifying excess withholding if that withholding exceeds \$250,000.

The compromises by the USTC and industry were included in the draft legislation, which would allow for a refund mechanism, as requested by industry, but would also enact fraud protection provisions to protect the state and the USTC. The TRC also received information from the USTC on the cost of administering this proposal with the enhanced fraud protection. While this proposal would not result in a reduction in tax revenue, it would impose a new administrative requirement on the USTC, which would have to review and audit all requests for a refund. All else being equal, this would divert administrative time away from other audit duties.

While several TRC members expressed support for this proposal at a conceptual level, they also expressed concern with the administrative burden, opportunity costs of auditor time, and the potential for fraud and abuse. Others expressed concern that this proposal would benefit only a relatively small number of taxpayers. TRC members who are tax practitioners observed that in their tax practices it is rare for a pass-through entity and a pass-through entity taxpayer to have different tax years.

Given these and other concerns, the TRC took no action on the draft legislation.

Conclusion

Thank you for allowing us the opportunity to present our findings on these study issues. While we have no formal recommendations for you at this time, we hope that the information obtained from our review will be useful should the Governor and Legislature consider these issues in the future.

On behalf of all TRC members, it is an honor to serve you and to be asked to review these important issues. We stand ready to provide assistance in the future as you direct.

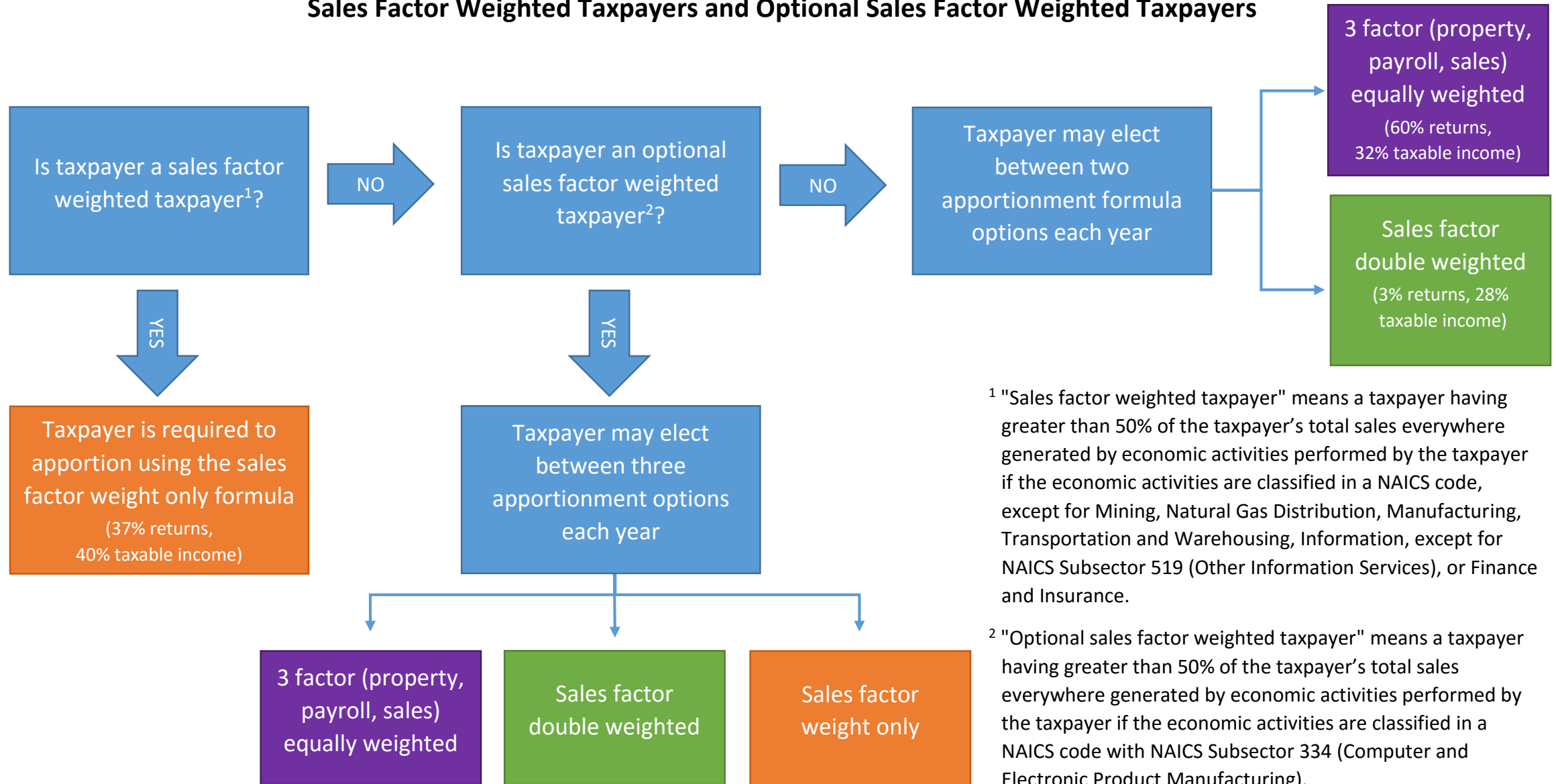
Sincerely,



Curtis Trader
Chair

Apportionment of Business Income for Purposes of the Corporate Income Tax

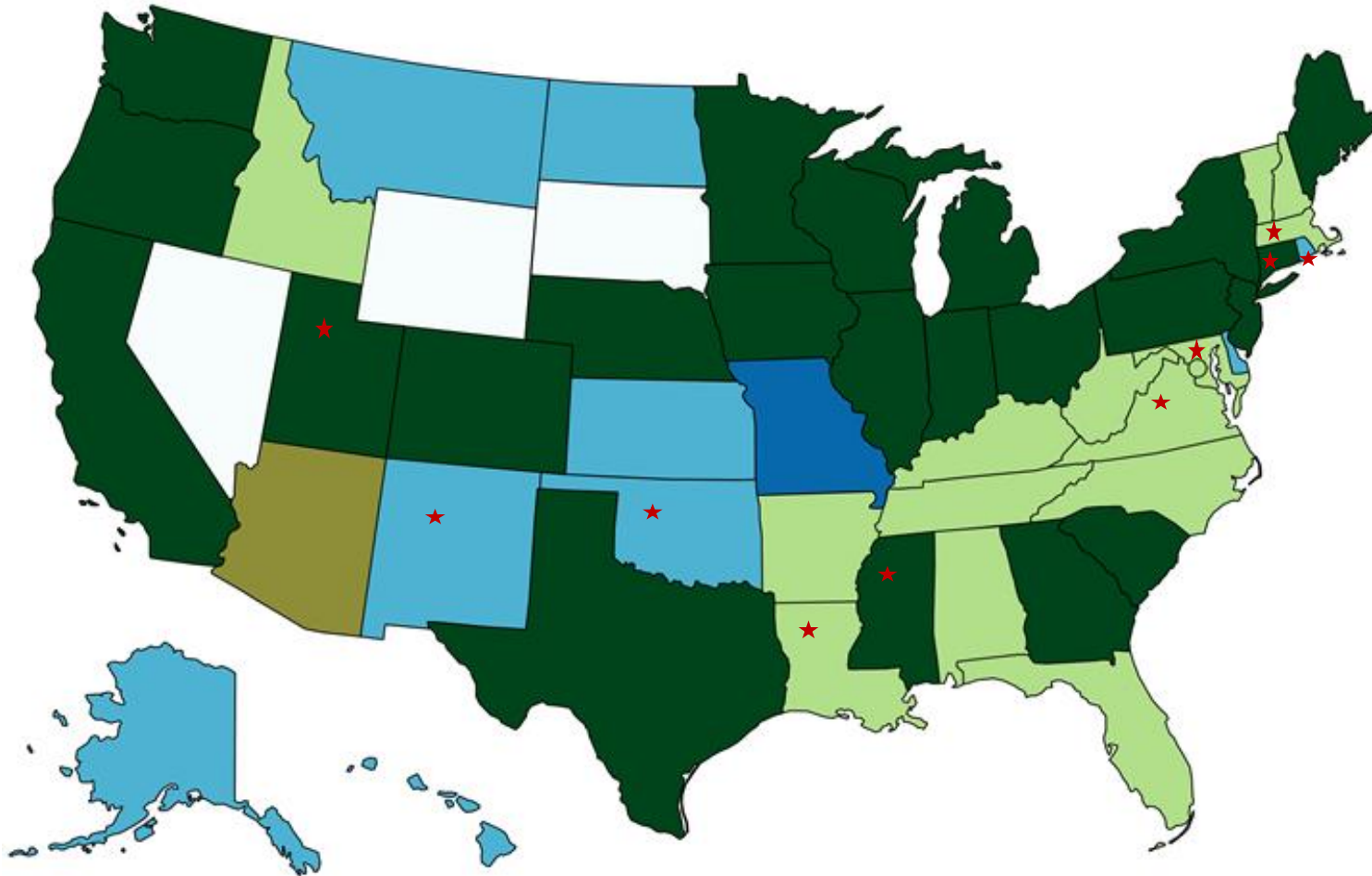
Sales Factor Weighted Taxpayers and Optional Sales Factor Weighted Taxpayers



¹ "Sales factor weighted taxpayer" means a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code, except for Mining, Natural Gas Distribution, Manufacturing, Transportation and Warehousing, Information, except for NAICS Subsector 519 (Other Information Services), or Finance and Insurance.

² "Optional sales factor weighted taxpayer" means a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code with NAICS Subsector 334 (Computer and Electronic Product Manufacturing).

State Apportionment of Corporate Income – 2014 Tax Foundation



- | | |
|---|--|
|  Single sales factor (100% sales) |  3 factors equally weighted (33 1/3%) |
|  Double-weighted sales factor (50% sales) |  Election – 3 factors equally weighted & 50% or greater sales |
|  Election – double weighted sales & single sales factor† |  No corporate income tax |

NOTES: ★ Denotes a state with an alternative apportionment formula for certain industries, as follows: **Connecticut**: Double weighted sales factor for Retail; **Louisiana**: Single sales factor for Manufacturing; **Maryland**: Single sales factor for Manufacturing; **Massachusetts**: Single sales factor for Manufacturing; **Mississippi**: 3 factors equally weighted for Manufacturing; **New Mexico**: Double weighted sales factor optional for Manufacturing; **Oklahoma**: Double weighted sales factor for Investment > \$200M; **South Carolina**: Double weighted sales factor optional for Manufacturing; **Utah**: Double weighted sales factor for Manufacturing and Logistics; **Virginia**: Single sales factor optional for Manufacturing
 †AZ will complete phase-in of single sales factor option in January 2018.

“Manufacturing Sales and Use Tax Exemption”

Utah Code Subsection 59-12-102 (65) – Definition of “Manufacturing facility”

(65) "Manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;
- (F) plastic;
- (G) textile; or
- (H) rubber; and

(ii) the new products under Subsection (65)(b)(i) would otherwise be made with nonrecycled materials; or

(c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is placed in service on or after May 1, 2006.

Utah Code Subsection 59-12-104 (14) - Exemption

(14) (a) amounts paid or charged for a purchase or lease:

(i) by a manufacturing facility located in the state; and

- (ii) of machinery, equipment, or normal operating repair or replacement parts if the machinery, equipment, or normal operating repair or replacement parts have an economic life of three or more years and are used:
 - (A) in the manufacturing process to manufacture an item sold as tangible personal property; or
 - (B) for a scrap recycler, to process an item sold as tangible personal property;
- (b) amounts paid or charged for a purchase or lease:
 - (i) by an establishment:
 - (A) described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
 - (B) located in the state; and
 - (ii) of machinery, equipment, or normal operating repair or replacement parts if the machinery, equipment, or normal operating repair or replacement parts have an economic life of three or more years and are used in:
 - (A) the production process to produce an item sold as tangible personal property;
 - (B) research and development;
 - (C) transporting, storing, or managing tailings, overburden, or similar waste materials produced from mining;
 - (D) developing or maintaining a road, tunnel, excavation, or similar feature used in mining; or
 - (E) preventing, controlling, or reducing dust or other pollutants from mining;
- (c) amounts paid or charged for a purchase or lease:
 - (i) by an establishment:
 - (A) described in NAICS Code 518112, Web Search Portals, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
 - (B) located in the state; and
 - (ii) of machinery, equipment, or normal operating repair or replacement parts if the machinery, equipment, or normal operating repair or replacement parts:
 - (A) are used in the operation of the web search portal; and

- (B) have an economic life of three or more years;
- (d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission:
 - (i) shall by rule define the term "establishment"; and
 - (ii) may by rule define what constitutes:
 - (A) processing an item sold as tangible personal property;
 - (B) the production process, to produce an item sold as tangible personal property; or
 - (C) research and development.

SALES AND USE TAX EXEMPTIONS FOR MANUFACTURING INPUTS BY STATE

✓ = YES	Column Not Applicable	Blank Cell = No pertinent statutes located	X= Limited Exemption	? = Statute unclear on this type of exemption
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State	Sales and Use Tax	General Exemption	Machinery/ Equipment Exempt	Replacement Parts Exempt	Materials Exempt		Limitations
					Processing Materials/ Consumables	Ingredients/ Component Parts	
Alabama	✓	✓			✓		Processing materials/consumables exemption applies to coal or coke used in manufacturing tangible personal property
Alaska							
Arizona	✓	✓	✓		✓	✓	
Arkansas	✓	✓	✓	✓	✓		
California	✓	✓	✓	✓	✓	?	No exemption for consumables with less than one-year economic life
Colorado	✓	✓	✓				\$500 minimum purchase price for machinery to be exempt
Connecticut	✓	✓	✓	✓	✓	✓	
Delaware							
Florida	✓	Limited	X				Machinery exemption that applies to new or expanding businesses (some businesses exempted)
Georgia	✓	✓	✓	✓	?		
Hawaii	✓						
Idaho	✓	✓	✓		✓	✓	
Illinois	✓	✓	✓	✓			

SALES AND USE TAX EXEMPTIONS FOR MANUFACTURING INPUTS BY STATE

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State	Sales and Use Tax	General Exemption	Machinery/ Equipment Exempt	Replacement Parts Exempt	Materials Exempt		Limitations
					Processing Materials/ Consumables	Ingredients/ Component Parts	
Indiana	✓	✓	✓				
Iowa	✓	✓				✓	
Kansas	✓	✓	✓		✓	✓	
Kentucky	✓	✓	✓		✓	✓	Machinery exemption applies to hand tools and tools attached to a machine that a useful life of less than one year Processing materials exemption applies to tangible personal property that has a useful life of less than one year
Louisiana	✓						Political subdivisions are authorized to give exemptions, but it is not mandatory that they do so—there is no statewide exemption
Maine	✓	✓	✓		✓	✓	Exemptions apply to contracts with the federal government only
Maryland	✓	✓	✓		✓		
Massachusetts	✓	✓	✓	✓	?	✓	
Michigan	✓	?	?		?	?	Exemption for tangible personal property used in a qualified business activity of a purchaser

SALES AND USE TAX EXEMPTIONS FOR MANUFACTURING INPUTS BY STATE

✓ = YES	Column Not Applicable	Blank Cell = No pertinent statutes located	X= Limited Exemption	? = Statute unclear on this type of exemption
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State	Sales and Use Tax	General Exemption	Machinery/ Equipment Exempt	Replacement Parts Exempt	Materials Exempt		Limitations
					Processing Materials/ Consumables	Ingredients/ Component Parts	
Minnesota	✓	✓	✓	✓	✓	✓	
Mississippi	✓						
Missouri	✓	✓	✓	✓	✓	✓	
Montana							
Nebraska	✓	✓	✓	✓			
Nevada	✓						
New Hampshire							
New Jersey	✓	✓	✓				
New Mexico	✓						
New York	✓	✓	✓	?	✓		Machinery exemption excludes parts with economic life of one year or less and tools or supplies for the machinery
North Carolina	✓	✓	X			✓	Machinery exemption for logging machinery used in commercial logging business
North Dakota	✓	Limited	X	X			Machinery and parts exemptions that only apply to new and expanding manufacturing plants
Ohio	✓	✓				✓	
Oklahoma	✓	✓	✓			✓	
Oregon							

SALES AND USE TAX EXEMPTIONS FOR MANUFACTURING INPUTS BY STATE

✓ = YES	Column Not Applicable	Blank Cell = No pertinent statutes located	X= Limited Exemption	? = Statute unclear on this type of exemption
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State	Sales and Use Tax	General Exemption	Machinery/ Equipment Exempt	Replacement Parts Exempt	Materials Exempt		Limitations
					Processing Materials/ Consumables	Ingredients/ Component Parts	
Pennsylvania	✓	✓	✓				Machinery exemption that applies to mold equipment only
Rhode Island	✓	✓	✓	✓	✓	✓	
South Carolina	✓	✓	✓	✓	✓		
South Dakota	✓	✓				✓	
Tennessee	✓	✓			✓	✓	
Texas	✓	✓	✓		✓	✓	
Utah	✓	✓	✓	✓		✓	Machinery and parts exemptions include machinery/equipment or parts with an economic life of three or more years
Vermont	✓	✓	✓		✓	✓	
Virginia	✓	✓	✓	✓	✓	✓	
Washington	✓	✓	✓	✓			Exemption does not apply to property with a useful life of less than one year
West Virginia	✓	✓	✓		✓		Exemption available as refund
Wisconsin	✓	✓	✓	✓	✓	✓	
Wyoming	✓	✓	✓		✓	✓	Machinery exemption expires in 2018
TOTAL	45	37	31	15	22	22	

PASS-THROUGH ENTITY AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill creates a process for a pass-through entity to obtain a refund of qualifying excess withholding.

Highlighted Provisions:

This bill:

- ▶ defines qualifying excess withholding;
- ▶ creates a process for a pass-through entity to obtain a refund of qualifying excess withholding, if the qualifying excess withholding exceeds tax liability by a certain threshold; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-10-529, as last amended by Laws of Utah 2013, Chapter 74

59-10-1403, as last amended by Laws of Utah 2016, Chapter 87

ENACTS:

59-10-1403.3, Utah Code Annotated 1953

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

Section 1. Section **59-10-529** is amended to read:

59-10-529. Overpayment of tax -- Credits -- Refunds.

(1) If there has been an overpayment of any tax imposed by this chapter, the amount of overpayment is credited as follows:

- (a) against an income tax due from a taxpayer;

33 (b) against:

34 (i) the amount of a judgment against a taxpayer, including a final judgment or order
35 requiring payment of a fine or of restitution to a victim under Title 77, Chapter 38a, Crime
36 Victims Restitution Act, obtained through due process of law by an entity of state or local
37 government; or

38 (ii) subject to Subsection (4)(a)(i), a child support obligation that is due or past due, as
39 determined by the Office of Recovery Services in the Department of Human Services and after
40 notice and an opportunity for an adjudicative proceeding, as provided in Subsection [~~(2)~~]
41 (4)(a)(iii); or

42 (c) subject to [~~Subsection~~] Subsections (3), (5), (6), [~~or~~] and (7), as bail[;] to ensure the
43 appearance of a taxpayer before the appropriate authority to resolve an outstanding warrant
44 against the taxpayer for which bail is due, if a court of competent jurisdiction has not approved
45 an alternative form of payment.

46 (2) If a balance remains after an overpayment is credited in accordance with Subsection
47 (1), the balance shall be refunded to the taxpayer.

48 (3) Bail described in Subsection (1)(c) may be applied to any fine or forfeiture:

49 (a) that is due and related to a warrant that is outstanding on or after February 16, 1984;
50 and

51 (b) in accordance with Subsections (5) and (6).

52 (4) (a) The amount of an overpayment may be credited against an obligation described
53 in Subsection (1)(b)(ii) if the Office of Recovery Services has sent written notice to the
54 taxpayer's last-known address or the address on file under Section 62A-11-304.4, stating:

55 (i) the amount of child support that is due or past due as of the date of the notice or
56 other specified date;

57 (ii) that any overpayment shall be applied to reduce the amount of due or past-due child
58 support specified in the notice; and

59 (iii) that the taxpayer may contest the amount of past-due child support specified in the
60 notice by filing a written request for an adjudicative proceeding with the office within 15 days
61 of the notice being sent.

62 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
63 Office of Recovery Services shall establish rules to implement this Subsection (4), including

64 procedures, in accordance with the other provisions of this section, to ensure:

65 (i) prompt reimbursement to a taxpayer of any amount of an overpayment that was
66 credited against a child support obligation in error; and

67 (ii) prompt distribution of properly credited funds to the obligee parent.

68 (5) The amount of an overpayment may be credited against bail described in
69 Subsection (1)(c) if:

70 (a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail,
71 appear, or otherwise satisfy the terms of a citation, summons, or court order; and

72 (b) a notice of intent to apply the overpayment as bail on the issued warrant has been
73 sent to the taxpayer's current address on file with the commission.

74 (6) (a) (i) The commission shall deliver an overpayment applied as bail to the court that
75 issued the warrant of arrest.

76 (ii) The clerk of the court is authorized to endorse the check or commission warrant of
77 payment on behalf of the payees and deposit the money in the court treasury.

78 (b) (i) The court receiving an overpayment applied as bail shall order withdrawal of the
79 warrant for arrest of the taxpayer if:

80 (A) the case is a case for which a personal appearance of the taxpayer is not required;
81 and

82 (B) the dollar amount of the overpayment represents the full dollar amount of bail.

83 (ii) In a case except for a case described in Subsection (6)(b)(i):

84 (A) the court receiving the overpayment applied as bail is not required to order the
85 withdrawal of the warrant of arrest of the taxpayer during the 40-day period; and

86 (B) the taxpayer may be arrested on the warrant.

87 (c) (i) If a taxpayer fails to respond to the notice required by Subsection (5)(b), or to
88 resolve the warrant within 40 days after the notice is sent under Subsection (5)(b), the
89 overpayment applied as bail is forfeited.

90 (ii) A court may issue another warrant or allow the original warrant to remain in force
91 if:

92 (A) the taxpayer has not complied with an order of the court;

93 (B) the taxpayer has failed to appear and respond to a criminal charge for which a
94 personal appearance is required; or

95 (C) the taxpayer has paid partial but not full bail in a case for which a personal
96 appearance is not required.

97 (d) If the alleged violations named in a warrant are later resolved in favor of the
98 taxpayer, the bail amount shall be remitted to the taxpayer.

99 (7) The fine and bail forfeiture provisions of this section apply to all warrants, fines,
100 fees, and surcharges issued in cases charging a taxpayer with a felony, a misdemeanor, or an
101 infraction described in this section, which are outstanding on or after February 16, 1984.

102 (8) If the amount [~~allowable~~] allowed as a credit for tax withheld from a taxpayer
103 exceeds the tax to which the credit relates, the excess is considered an overpayment.

104 (9) (a) Subject to Subsection (9)(b), a taxpayer shall claim [~~for~~] a credit or refund of an
105 overpayment that is attributable to a net operating loss carry back or carry forward [~~shall be~~
106 ~~filed~~] within three years [~~from the due date of~~] after the day on which the return for the taxable
107 year of the net operating loss is due.

108 (b) The three-year period described in Subsection (9)(a) shall be extended by any
109 extension of time provided in statute for filing the return described in Subsection (9)(a).

110 (10) If there is no tax liability for a period in which an amount is paid under this
111 chapter, the amount is an overpayment.

112 (11) If a tax under this chapter is assessed or collected after the expiration of the
113 applicable period of limitation, that amount is an overpayment.

114 (12) (a) A taxpayer may file a claim for a credit or refund of an overpayment within
115 two years [~~from the date~~] after the day on which a notice of change, notice of correction, or
116 amended return is required to be filed with the commission if the taxpayer is required to:

117 (i) report a change or correction in income reported on the taxpayer's federal income
118 tax return;

119 (ii) report a change or correction that is treated in the same manner as if the change or
120 correction were an overpayment for federal income tax purposes; or

121 (iii) file an amended return with the commission.

122 (b) If a report or amended return is not filed within 90 days after the day on which the
123 report or amended return is due, interest on any resulting refund or credit ceases to accrue after
124 the 90-day period.

125 (c) The amount of the credit or refund may not exceed the amount of the reduction in

126 tax attributable to the federal change, correction, or items amended on the taxpayer's amended
127 federal income tax return.

128 (d) Except as provided in Subsection (12)(a), this Subsection (12) does not affect the
129 amount or the time within which a claim for credit or refund may be filed.

130 (13) A credit or refund may not be allowed or made if an overpayment is less than \$1.

131 (14) In the case of an overpayment of tax by an employer under Part 4, Withholding of
132 Tax, an employer shall receive a refund or credit [~~shall be made to the employer~~] only to the
133 extent that the amount of the overpayment is not deducted and withheld from wages under this
134 chapter.

135 (15) (a) If a taxpayer that is allowed a refund under this chapter dies, the commission
136 may make payment to the personal representative of the taxpayer's estate.

137 (b) If there is no personal representative of the taxpayer's estate, the commission may
138 make payment [~~may be made~~] to those persons [~~who~~] that establish entitlement to inherit the
139 property of the decedent in the proportions established in Title 75, Utah Uniform Probate Code.

140 (16) If an overpayment relates to a change in net income described in Subsection
141 59-10-536(2)(a), a credit may be allowed or a refund paid any time before the expiration of the
142 period within which a deficiency may be assessed.

143 (17) An overpayment of a tax imposed by this chapter shall accrue interest at the rate
144 and in the manner prescribed in Section 59-1-402.

145 (18) A pass-through entity may claim a refund of qualifying excess withholding in
146 accordance with Section 59-10-1403.3 in lieu of a pass-through entity taxpayer claiming a tax
147 credit under Section 59-7-614.4 or Section 59-10-1103.

148 Section 2. Section **59-10-1403** is amended to read:

149 **59-10-1403. Income tax treatment of a pass-through entity -- Returns --**
150 **Classification same as under Internal Revenue Code.**

151 (1) Subject to Subsection (3), a pass-through entity is not subject to a tax imposed by
152 this chapter.

153 (2) [~~The~~] Except as provided in Section 59-10-1403.3, the income, gain, loss,
154 deduction, or credit of a pass-through entity shall be passed through to one or more
155 pass-through entity taxpayers as provided in this part.

156 (3) A pass-through entity is subject to the return filing requirements of Sections

157 59-10-507 and 59-10-514.

158 (4) ~~[A]~~ For purposes of taxation under this title, a pass-through entity that transacts
159 business in the state shall be classified [for purposes of taxation under this title] in the same
160 manner as the pass-through entity is classified for federal income tax purposes.

161 Section 3. Section **59-10-1403.3** is enacted to read:

162 **59-10-1403.3. Refund of amounts paid or withheld for a pass-through entity.**

163 (1) As used in this section, "qualifying excess withholding" means an amount that:

164 (a) is paid or withheld:

165 (i) by a pass-through entity that has a different taxable year than the pass-through entity
166 that requests a refund under this section; and

167 (ii) on behalf of the pass-through entity that requests a refund, if the pass-through entity
168 that requests the refund also is a pass-through entity taxpayer; and

169 (b) is equal to the difference between:

170 (i) the amount paid or withheld for the taxable year on behalf of the pass-through entity
171 that requests the refund; and

172 (ii) the product of 5% and the income described in Subsection 59-10-1403.2(1)(a)(i) of
173 the pass-through entity that requests the refund.

174 (2) A pass-through entity may claim a refund of qualifying excess withholding:

175 (a) for a taxable year ending on or after July 1, 2017, if the amount of the qualifying
176 excess withholding is equal to or greater than \$250,000; or

177 (b) for a claim filed between July 1, 2017, and July 31, 2017, for the time period for
178 filing a claim for a credit or refund under Section 59-1-1410, if the amount of the qualifying
179 excess withholding is equal to or greater than \$250,000.

180 (3) A pass-through entity that requests a refund of qualifying excess withholding under
181 this section shall:

182 (a) apply to the commission for a refund on or, subject to Subsection (4), after the day
183 on which the pass-through entity files the pass-through entity's income tax return; and

184 (b) provide any information that the commission may require to determine that the
185 pass-through entity is eligible to receive the refund.

186 (4) (a) Except as provided in Subsection (4)(b), a pass-through entity shall claim a
187 refund of qualifying excess withholding under this section within 30 days after the earlier of

188 the day on which:

189 (i) the pass-through entity files an income tax return; or

190 (ii) the pass-through entity's income tax return is due, including any extension of due
191 date authorized in statute.

192 (b) The time period described in this Subsection (4) does not apply to a claim for a
193 refund filed under Subsection (2)(b).

194 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
195 commission may make rules establishing the information a pass-through entity shall provide to
196 the commission to obtain a refund of qualifying excess withholding under this section.