

**CORPORATE FRANCHISE AND INCOME  
TAXES - TREATMENT OF CERTAIN  
COOPERATIVES**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: John L. Valentine**

**This act modifies Corporate Franchise and Income Taxes to define terms, to amend the exemption from state corporate franchise and income taxes for certain cooperatives, and to make technical changes. This act has an immediate effective date. This act has retrospective operation for taxable years beginning on or after January 1, 2002.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**59-7-101**, as last amended by Chapter 331, Laws of Utah 1997

**59-7-102**, as last amended by Chapter 331, Laws of Utah 1997

**59-7-402**, as last amended by Chapters 20 and 311, Laws of Utah 1995

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

Section 1. Section **59-7-101** is amended to read:

**59-7-101. Definitions.**

As used in this chapter:

(1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and 59-7-106.

(2) (a) "Affiliated group" means one or more chains of corporations that are connected through stock ownership with a common parent corporation that meet the following requirements:

(i) at least 80% of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and

(ii) the common parent directly owns at least 80% of the stock of at least one of the corporations in the group.

(b) "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state.

(c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(3) "Apportionable income" means adjusted income less nonbusiness income net of related expenses, to the extent included in adjusted income.

(4) "Apportioned income" means apportionable income multiplied by the apportionment fraction as determined in Section 59-7-311.

(5) "Business income" means income as defined in Section 59-7-302.

(6) "Corporate return" or "return" includes a combined report.

(7) (a) "Common ownership" means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of:

(i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue Code, except that 50% shall be substituted for 80%;

(ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue Code, except that 50% shall be substituted for 80%; or

(iii) three or more corporations each of which is a member of a group of corporations described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

(A) a common parent corporation included in a group of corporations described in Subsection (2)(a)(i); and

(B) included in a group of corporations described in Subsection (2)(a)(ii).

(b) Ownership of outstanding voting stock shall be determined by Section 1563, Internal Revenue Code.

(8) "Corporation" includes:

(a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue Code; and

(b) other organizations that are taxed as corporations for federal income tax purposes under the Internal Revenue Code.

(9) "Dividend" means any distribution, including money or other type of property, made by a corporation to its shareholders out of its earnings or profits accumulated after December 31, 1930.

(10) (a) "Doing business" includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in this state~~[-and;~~ ~~except].~~

(b) Except as provided in Subsection 59-7-102(2), "doing business" includes:

(i) the right to do business through incorporation or qualification[;];

(ii) the owning, renting, or leasing of real or personal property within this state[;]; and

(iii) the participation in joint ventures, working and operating agreements, the performance of which takes place in this state.

(11) "Domestic corporation" means a corporation ~~[which]~~ that is incorporated or organized under the laws of this state.

(12) (a) "Farmers' cooperative" means an association, corporation, or other organization that is:

(i) (A) an association, corporation, or other organization of:

(I) farmers; or

(II) fruit growers; or

(B) an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (12)(a)(i)(A); and

(ii) organized and operated on a cooperative basis to:

(A) (I) market the products of members of the cooperative or the products of other producers; and

(II) return to the members of the cooperative or other producers the proceeds of sales less necessary marketing expenses on the basis of the quantity of the products of a member or producer or the value of the products of a member or producer; or

(B) (I) purchase supplies and equipment for the use of members of the cooperative or other persons; and

(II) turn over the supplies and equipment described in Subsection (12)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or other persons.

(b) (i) Subject to Subsection (12)(b)(ii), for purposes of this Subsection (12), the commission

by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, shall define:

(A) the terms:

(I) "member"; and

(II) "producer"; and

(B) what constitutes an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (12)(a)(i)(A).

(ii) The rules made under this Subsection (12)(b) shall be consistent with the filing requirements under federal law for a farmers' cooperative.

~~[(12)]~~ (13) "Foreign corporation" means a corporation ~~[which]~~ that is not incorporated or organized under the laws of this state.

~~[(13)]~~ (14) (a) "Foreign operating company" means a corporation ~~[which]~~ that:

(i) is incorporated in the United States[;]; and

(ii) 80% or more of whose business activity, as determined under Section 59-7-401, is conducted outside the United States.

(b) "Foreign operating company" does not include a corporation ~~[which]~~ that qualifies for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

~~[(14)]~~ (15) "Foreign sales corporation" means a corporation as defined in Section 922, Internal Revenue Code.

~~[(15)]~~ (16) "Income" includes losses.

~~[(16)]~~ (17) "Internal Revenue Code" means Title 26 of the United States Code as effective during the year in which Utah taxable income is determined.

~~[(17)]~~ (18) "Nonbusiness income" means income as defined in Section 59-7-302.

~~[(18)]~~ (19) "Nonresident shareholder" means any shareholder of an S corporation who on the last day of the taxable year of the S corporation, is:

(a) an individual not domiciled in Utah; or

(b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.

~~[(19)]~~ (20) "Related expenses" means:

(a) expenses directly attributable to nonbusiness income; and

(b) the portion of interest or other expense indirectly attributable to both nonbusiness and business income which bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection (20), as the average amount of the asset producing the nonbusiness income bears to the average amount of all assets of the taxpayer within the taxable year.

~~[(20)]~~ (21) "Resident shareholder" means any shareholder of an S corporation who is not a nonresident shareholder.

~~[(21)]~~ (22) "S corporation" means a small business corporation as defined in Section 1361, Internal Revenue Code.

~~[(22)]~~ (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under Section 168, Internal Revenue Code.

~~[(23)]~~ (24) "State of the United States" includes any of the 50 states or the District of Columbia and "United States" includes the 50 states and the District of Columbia.

~~[(24)]~~ (25) (a) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the adjusted income is computed~~[, and also includes, in]~~.

(b) In the case of a return made for a fractional part of a year under this chapter or under rules prescribed by the commission, "taxable year" includes the period for which such return is made.

~~[(25)]~~ (26) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

~~[(26)]~~ (27) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Section 59-7-401.

~~[(27)]~~ (28) "Unadjusted income" means federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions for dividends received.

~~[(28)]~~ (29) (a) "Unitary group" means a group of corporations that:

(i) are related through common ownership; and

(ii) by a preponderance of the evidence as determined by a court of competent jurisdiction

or the commission, are economically interdependent with one another as demonstrated by the following factors:

- (A) centralized management;
- (B) functional integration;
- (C) economies of scale.
- (b) "Unitary group" does not include S corporations.

~~[(29)]~~ (30) "Utah net loss" means the current year Utah taxable income before Utah net loss deduction, if determined to be less than zero.

~~[(30)]~~ (31) "Utah net loss deduction" means the amount of Utah net losses from other taxable years ~~[which]~~ that may be carried back or carried forward to the current taxable year in accordance with Section 59-7-110.

~~[(31)]~~ (32) (a) "Utah taxable income" means Utah taxable income before net loss deduction less Utah net loss deduction.

(b) "Utah taxable income" includes income from tangible or intangible property located or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.

~~[(32)]~~ (33) "Utah taxable income before net loss deduction" means apportioned income plus nonbusiness income allocable to Utah net of related expenses.

~~[(33)]~~ (34) (a) "Water's edge combined report" means a report combining the income and activities of:

(i) all members of a unitary group ~~[which]~~ that are:

(A) corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code, in accordance with Subsection ~~[(33)]~~ (34)(b); and

(B) corporations organized or incorporated outside of the United States meeting the threshold level of business activity; and

(ii) an affiliated group electing to file a water's edge combined report under Subsection 59-7-402(2).

(b) There is a rebuttable presumption that a corporation which qualifies for the Puerto Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a unitary group.

~~[(34)]~~ (35) "Worldwide combined report" means the combination of the income and activities of all members of a unitary group irrespective of the country in which the corporations are incorporated or conduct business activity.

Section 2. Section **59-7-102** is amended to read:

**59-7-102. Exemptions.**

(1) Except as provided in ~~[Part 8]~~ this section, the following are exempt from this chapter:

(a) ~~[organizations]~~ an organization exempt under ~~[Sections]~~ Section 501 ~~[and 521]~~, Internal Revenue Code~~[-and organizations meeting the requirements of Subchapter T, Internal Revenue Code];~~;

(b) ~~[organizations]~~ an organization exempt under Section 528, Internal Revenue Code~~[-provided that to the extent such organization's income is taxable for federal tax purposes under Section 528, such organization's income is also taxable under this chapter];~~;

(c) an insurance ~~[companies which are]~~ company that is otherwise taxed on ~~[their]~~ the insurance company's premiums under ~~[Title 59;]~~ Chapter 9, Taxation of Admitted Insurers; ~~[and]~~

(d) a building ~~[authorities]~~ authority as defined in Section 17A-3-902~~[-];~~ or

(e) a farmers' cooperative.

(2) Notwithstanding any other provision in ~~[Chapter 7]~~ this chapter or Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a person not otherwise subject to the tax imposed by this chapter or Chapter 8 ~~[shall]~~ is not [become] subject to the tax imposed by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, ~~[by reason]~~ because of:

(a) that person's ownership of tangible personal property located at the premises of a printer's facility in this state with which the person has contracted for printing; or

(b) the activities of the person's employees or agents who are:

(i) located solely at the premises of a printer's facility; and ~~[who are]~~

(ii) performing services;

(A) related to;

(I) quality control[;];

(II) distribution[;]; or

(III) printing services; and

(B) performed by the printer's facility in this state with which the person has contracted for printing.

(3) Notwithstanding Subsection (1), an organization, company, authority, or farmers' cooperative exempt from this chapter under Subsection (1) is subject to Part 8, Unrelated Business Income, to the extent provided in Part 8.

(4) Notwithstanding Subsection (1)(b), to the extent the income of an organization described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal Revenue Code, the organization's income is also taxable under this chapter.

Section 3. Section **59-7-402** is amended to read:

**59-7-402. Water's edge combined report.**

(1) Except as provided in Section 59-7-403, if any corporation listed in Subsection 59-7-101 [~~(33)~~] (34)(a) is doing business in Utah, the unitary group shall file a water's edge combined report.

(2) (a) A group of corporations that are not otherwise a unitary group may elect to file a water's edge combined report if each member of the group is:

(i) doing business in Utah;

(ii) part of the same affiliated group; and

(iii) qualified, under Section 1501, Internal Revenue Code, to file a federal consolidated return.

(b) Each corporation within the affiliated group that is doing business in Utah must consent to filing a combined report. If an affiliated group elects to file a combined report, each corporation within the affiliated group that is doing business in Utah must file a combined report.

(c) Corporations that elect to file a water's edge combined report under this section may not thereafter elect to file a separate return without the consent of the commission.

**Section 4. Effective date.**

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

**Section 5. Retrospective operation.**

This act has retrospective operation for taxable years beginning on or after January 1, 2002.