

Representative James A. Dunnigan proposes the following substitute bill:

CORPORATE FRANCHISE AND INCOME TAX

AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends the Corporate Franchise and Income Taxes chapter relating to the minimum tax, tax rates, and apportionment of income.

Highlighted Provisions:

This bill:

- ▶ for taxable years beginning on or after January 1, 2006, allows a taxpayer to elect to calculate the apportionment of business income on the basis of a fraction that increases the weighting of the sales factor;
- ▶ provides that a taxpayer making such an election may not revoke the election for a period of five taxable years;
- ▶ grants rulemaking authority to the State Tax Commission;
- ▶ addresses the State Tax Commission's authority to make adjustments in the accounting, allocation, or apportionment of income; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect for taxable years beginning on or after January 1, 2006.



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **59-7-311**, as renumbered and amended by Chapter 2, Laws of Utah 1987

29 **59-7-320**, as last amended by Chapter 83, Laws of Utah 1994

30 **59-7-401**, as enacted by Chapter 169, Laws of Utah 1993

31 **59-7-801**, as enacted by Chapter 178, Laws of Utah 1994



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

34 Section 1. Section **59-7-311** is amended to read:

35 **59-7-311. Method of apportionment of business income.**

36 (1) All business income shall be apportioned to this state by multiplying the business
37 income by a fraction[;] calculated as provided in Subsection (2).

38 (2) The fraction described in Subsection (1) is calculated as follows:

39 (a) for a taxpayer that does not make an election authorized by Subsection (3):

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

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

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

43 (C) the sales factor[~~, and~~] as calculated under Section 59-7-317; and

44 (ii) the denominator of [~~which~~] the fraction is three[;]; and

45 (b) for a taxpayer that makes an election authorized by Subsection (3):

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

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

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

49 (C) the product of:

50 (I) the sales factor as calculated under Section 59-7-317; and

51 (II) two; and

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

53 (3) (a) For purposes of Subsection (2) and subject to Subsection (3)(b), for taxable
54 years beginning on or after January 1, 2006, a taxpayer may elect to calculate the fraction for
55 apportioning business income under this section in accordance with Subsection (2)(b).

56 (b) If a taxpayer makes the election described in Subsection (3)(a), the taxpayer may

57 not revoke the election for a period of five taxable years.

58 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
59 commission may make rules providing procedures for a taxpayer to make the election
60 described in Subsection (3)(a).

61 Section 2. Section **59-7-320** is amended to read:

62 **59-7-320. Equitable adjustment of standard allocation or apportionment.**

63 [If] Notwithstanding any other provision of this part, if the allocation and
64 apportionment provisions of this ~~[chapter]~~ part do not fairly represent the extent of the
65 taxpayer's business activity in this state, the taxpayer may petition for or the commission may
66 require, in respect to all or any part of the taxpayer's business activity, if reasonable:

67 (1) separate accounting;

68 (2) the exclusion of any one or more of the factors;

69 (3) the inclusion of one or more additional factors which will fairly represent the
70 taxpayer's business activity in this state; or

71 (4) the employment of any other method to effectuate an equitable allocation and
72 apportionment of the taxpayer's income.

73 Section 3. Section **59-7-401** is amended to read:

74 **59-7-401. Determining threshold level of business activity for corporations**
75 **organized or incorporated outside of the United States.**

76 (1) Except as provided in Subsection (2), in determining whether a corporation is a
77 foreign operating company or has met the threshold level of business activity, business activity
78 within and without the United States shall be measured by means of the factors ordinarily
79 applicable under Sections 59-7-312 through 59-7-319.

80 (2) (a) Any taxpayer who would ordinarily be required to apportion business income
81 ~~[by means of the three-factor formula]~~ in accordance with Part 3, Allocation and
82 Apportionment of Income -- Utah UDITPA Provisions, shall use a two-factor formula of
83 property and payroll.

84 (b) The results of the property and payroll factor computation shall be divided by two,
85 or by one if either the property or payroll factor has a denominator of zero.

86 Section 4. Section **59-7-801** is amended to read:

87 **59-7-801. Definitions.**

88 For purposes of this part:

89 (1) "Unrelated business income" means unrelated business income as determined under
90 Section 512, Internal Revenue Code.

91 (2) "Utah unrelated business income" means the unrelated business income
92 apportioned to Utah [~~by the apportionment method provided~~] in accordance with Part 3 [~~of this~~
93 ~~chapter~~], Allocation and Apportionment of Income -- Utah UDITPA Provisions.

94 Section 5. **Effective date.**

95 This bill takes effect for taxable years beginning on or after January 1, 2006.

State Impact

Passage of this bill could result in a Uniform School Fund loss of \$7,000,000 in FY 2007.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Uniform School Fund	\$0	\$0	\$0	(\$7,000,000)
TOTAL	\$0	\$0	\$0	(\$7,000,000)

Individual and Business Impact

Individuals will be allowed to elect to change the apportionment calculation which should provide many with a tax decrease.

Office of the Legislative Fiscal Analyst