

1 **INCOME TAX SUBTRACTION FOR**
2 **SPECIALIZED IMMIGRANT SERVICES**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Aaron Tilton**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Corporate Franchise and Income Taxes chapter to provide an
10 income tax subtraction for specialized immigrant services.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides definitions;
- 14 ▶ provides for a subtraction from unadjusted income for specialized immigrant
15 services corporations; and
- 16 ▶ makes technical changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill provides retrospective operation.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **59-7-101 (Contingently Superseded 05/02/05)**, as last amended by Chapter 54, Laws
24 of Utah 2004

25 **59-7-106**, as last amended by Chapter 211, Laws of Utah 2002

26 **59-7-402**, as last amended by Chapter 54, Laws of Utah 2004



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

29 Section 1. Section **59-7-101 (Contingently Superseded 05/02/05)** is amended to read:

30 **59-7-101 (Contingently Superseded 05/02/05). Definitions.**

31 As used in this chapter:

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

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

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

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

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

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

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

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

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

51 (6) "Biometric security" means using the unique characteristics of fingerprints, voice,
52 facial, or iris patterns to confirm a person's identity.

53 [~~6~~] (7) "Corporate return" or "return" includes a combined report.

54 [~~7~~] (8) (a) "Common ownership" means the direct or indirect control or ownership of
55 more than 50% of the outstanding voting stock of:

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

58 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue

59 Code, except that 50% shall be substituted for 80%; or

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

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

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

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

67 [~~8~~] (9) "Corporation" includes:

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

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

72 [~~9~~] (10) "Dividend" means any distribution, including money or other type of
73 property, made by a corporation to its shareholders out of its earnings or profits accumulated
74 after December 31, 1930.

75 [~~10~~] (11) (a) "Doing business" includes any transaction in the course of its business
76 by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate
77 business in this state.

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

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

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

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

83 [~~11~~] (12) "Domestic corporation" means a corporation that is incorporated or
84 organized under the laws of this state.

85 [~~12~~] (13) (a) "Farmers' cooperative" means an association, corporation, or other
86 organization that is:

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

88 (I) farmers; or

89 (II) fruit growers; or

90 (B) an association, corporation, or other organization that is similar to an association,
91 corporation, or organization described in Subsection [~~(12)~~] (13)(a)(i)(A); and

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

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

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

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

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

103 (b) (i) Subject to Subsection [~~(12)~~] (13)(b)(ii), for purposes of this Subsection (12), the
104 commission by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
105 Rulemaking Act, shall define:

106 (A) the terms:

107 (I) "member"; and

108 (II) "producer"; and

109 (B) what constitutes an association, corporation, or other organization that is similar to
110 an association, corporation, or organization described in Subsection [~~(12)~~] (13)(a)(i)(A).

111 (ii) The rules made under this Subsection [~~(12)~~] (13)(b) shall be consistent with the
112 filing requirements under federal law for a farmers' cooperative.

113 [~~(13)~~] (14) "Foreign corporation" means a corporation that is not incorporated or
114 organized under the laws of this state.

115 [~~(14)~~] (15) (a) "Foreign operating company" means a corporation that:

116 (i) is incorporated in the United States; and

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

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

121 ~~[(15)]~~ (16) "Income" includes losses.

122 ~~[(16)]~~ (17) "Internal Revenue Code" means Title 26 of the United States Code as
123 effective during the year in which Utah taxable income is determined.

124 ~~[(17)]~~ (18) "Nonbusiness income" is as defined in Section 59-7-302.

125 ~~[(18)]~~ (19) "Nonresident shareholder" means any shareholder of an S corporation who
126 on the last day of the taxable year of the S corporation, is:

127 (a) an individual not domiciled in Utah; or

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

129 ~~[(19)]~~ (20) "Related expenses" means:

130 (a) expenses directly attributable to nonbusiness income; and

131 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
132 and business income which bears the same ratio to the aggregate amount of such interest or
133 other expense, determined without regard to this Subsection ~~[(19)]~~ (20), as the average amount
134 of the asset producing the nonbusiness income bears to the average amount of all assets of the
135 taxpayer within the taxable year.

136 ~~[(20)]~~ (21) "Resident shareholder" means any shareholder of an S corporation who is
137 not a nonresident shareholder.

138 ~~[(21)]~~ (22) "S corporation" means an S corporation as defined in Section 1361, Internal
139 Revenue Code.

140 ~~[(22)]~~ (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
141 Section 168, Internal Revenue Code.

142 (24) "Specialized immigrant services corporation" means a corporation that:

143 (a) provides programs for English language instruction and for United States and Utah
144 government instruction to individuals who are:

145 (i) not citizens of the United States; and

146 (ii) not lawfully admitted aliens; and

147 (b) maintains a database:

148 (i) of individuals who have registered to receive services described in Subsection

149 (24)(a) through the corporation;

150 (ii) that uses biometric security;

151 (iii) that permits participants in the database to have 24-hour access to the database

152 information; and

153 (iv) that is used by the state or a political subdivision of the state for regulatory
154 purposes, including the issuance of a driver's license, in return for payments made by the
155 corporation to the state or a political subdivision of the state.

156 [~~23~~] (25) "State of the United States" includes any of the 50 states or the District of
157 Columbia and "United States" includes the 50 states and the District of Columbia.

158 [~~24~~] (26) (a) "Taxable year" means the calendar year or the fiscal year ending during
159 such calendar year upon the basis of which the adjusted income is computed.

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

163 [~~25~~] (27) "Taxpayer" means any corporation subject to the tax imposed by this
164 chapter.

165 [~~26~~] (28) "Threshold level of business activity" means business activity in the United
166 States equal to or greater than 20% of the corporation's total business activity as determined
167 under Section 59-7-401.

168 [~~27~~] (29) "Unadjusted income" means federal taxable income as determined on a
169 separate return basis before intercompany eliminations as determined by the Internal Revenue
170 Code, before the net operating loss deduction and special deductions for dividends received.

171 [~~28~~] (30) (a) "Unitary group" means a group of corporations that:

172 (i) are related through common ownership; and

173 (ii) by a preponderance of the evidence as determined by a court of competent
174 jurisdiction or the commission, are economically interdependent with one another as
175 demonstrated by the following factors:

176 (A) centralized management;

177 (B) functional integration; and

178 (C) economies of scale.

179 (b) "Unitary group" does not include S corporations.

180 [~~29~~] (31) "Utah net loss" means the current year Utah taxable income before Utah net
181 loss deduction, if determined to be less than zero.

182 [~~30~~] (32) "Utah net loss deduction" means the amount of Utah net losses from other

183 taxable years that may be carried back or carried forward to the current taxable year in
184 accordance with Section 59-7-110.

185 ~~[(31)]~~ (33) (a) "Utah taxable income" means Utah taxable income before net loss
186 deduction less Utah net loss deduction.

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

190 ~~[(32)]~~ (34) "Utah taxable income before net loss deduction" means apportioned income
191 plus nonbusiness income allocable to Utah net of related expenses.

192 ~~[(33)]~~ (35) (a) "Water's edge combined report" means a report combining the income
193 and activities of:

194 (i) all members of a unitary group that are:

195 (A) corporations organized or incorporated in the United States, including those
196 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
197 936, Internal Revenue Code, in accordance with Subsection ~~[(33)]~~ (35)(b); and

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

200 (ii) an affiliated group electing to file a water's edge combined report under Subsection
201 59-7-402(2).

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

205 ~~[(34)]~~ (36) "Worldwide combined report" means the combination of the income and
206 activities of all members of a unitary group irrespective of the country in which the
207 corporations are incorporated or conduct business activity.

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

209 **59-7-106. Subtractions from unadjusted income.**

210 In computing adjusted income the following amounts shall be subtracted from
211 unadjusted income:

212 (1) the foreign dividend gross-up included in gross income for federal income tax
213 purposes under Section 78, Internal Revenue Code;

214 (2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct
215 the loss on the current Utah return. The deduction shall be made by claiming the deduction on
216 the current Utah return which shall be filed by the due date of the return, including extensions.
217 For the purposes of this subsection all capital losses in a given year must be:

218 (a) deducted in the year incurred; or

219 (b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
220 Code;

221 (3) the decrease in salary expense deduction for federal income tax purposes due to
222 claiming the federal jobs credit under Section 51, Internal Revenue Code;

223 (4) the decrease in qualified research and basic research expense deduction for federal
224 income tax purposes due to claiming the federal research and development credit under Section
225 41, Internal Revenue Code;

226 (5) the decrease in qualified clinical testing expense deduction for federal income tax
227 purposes due to claiming the federal orphan drug credit under Section 28, Internal Revenue
228 Code;

229 (6) any decrease in any expense deduction for federal income tax purposes due to
230 claiming any other federal credit;

231 (7) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and
232 (2)(b);

233 (8) any income on the federal corporate return that has been previously taxed by Utah;

234 (9) amounts included in federal taxable income that are due to refunds of taxes
235 imposed for the privilege of doing business, or exercising a corporate franchise, including
236 income, franchise, corporate stock and business and occupation taxes paid by the corporation to
237 Utah, another state of the United States, a foreign country, a United States possession, or the
238 Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income
239 under Section 59-7-105;

240 (10) charitable contributions, to the extent allowed as a subtraction under Section
241 59-7-109;

242 (11) (a) 50% of the dividends deemed received or received from subsidiaries which are
243 members of the unitary group and are organized or incorporated outside of the United States
244 unless such subsidiaries are included in a combined report under Section 59-7-402 or 59-7-403.

245 In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the
246 dividends deemed received or received, the expense directly attributable to those dividends.
247 Interest expense attributable to excluded dividends shall be determined by multiplying interest
248 expense by a fraction, the numerator of which is the taxpayer's average investment in such
249 dividend paying subsidiaries, and the denominator of which is the taxpayer's average total
250 investment in assets;

251 (b) in determining income apportionable to this state, a portion of the factors of a
252 foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be
253 included in the combined report factors. The portion to be included shall be determined by
254 multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the
255 numerator of which is the amount of the dividend paid by the foreign subsidiary which is
256 included in adjusted income, and the denominator of which is the current year earnings and
257 profits of the foreign subsidiary as determined under the Internal Revenue Code;

258 (12) (a) 50% of the adjusted income of a foreign operating company unless the
259 taxpayer has elected to file a worldwide combined report as provided in Section 59-7-403. For
260 purposes of this Subsection (12), when calculating the adjusted income of a foreign operating
261 company, a foreign operating company may not deduct the subtractions allowable under [~~this~~
262 ~~subsection and~~] Subsection (11) and this Subsection (12);

263 (b) in determining income apportionable to this state, the factors for a foreign operating
264 company shall be included in the combined report factors in the same percentage its adjusted
265 income is included in the combined adjusted income;

266 (13) the amount of gain or loss which is included in unadjusted income but not
267 recognized for federal purposes on stock sold or exchanged by a member of a selling
268 consolidated group as defined in Section 338, Internal Revenue Code, if an election has been
269 made pursuant to Section 338(h)(10), Internal Revenue Code;

270 (14) the amount of gain or loss which is included in unadjusted income but not
271 recognized for federal purposes on stock sold, exchanged, or distributed by a corporation
272 pursuant to Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
273 Revenue Code, has been made for federal purposes;

274 (15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and
275 similar items due to a difference between basis for federal purposes and basis as computed

276 under Section 59-7-107; and

277 (b) if there has been a reduction in federal basis for a federal tax credit where there is
278 no corresponding Utah tax credit, the amount of the reduction in basis shall be allowed as an
279 expense in the year of the federal credit;

280 (16) any interest expense not deducted on the federal corporate return under Section
281 265(b) or 291(e), Internal Revenue Code;

282 (17) 100% of the dividends received from subsidiaries which are insurance companies
283 exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"
284 as defined by Subsection 59-7-101~~(7)~~ (8); ~~and~~

285 (18) any amount included in unadjusted income that was derived from money paid by
286 the taxpayer to the program fund and investment income earned on those payments under Title
287 53B, Chapter 8a, Higher Education Savings Incentive Program, that is included in federal
288 taxable income, but only when the monies are used for qualified higher education costs of the
289 beneficiary[-]; and

290 (19) all of the unadjusted income that a specialized immigrant services corporation
291 receives from:

292 (a) providing programs for English language instruction and for United States and Utah
293 government instruction to individuals who are:

294 (i) not citizens of the United States; and

295 (ii) not lawfully admitted aliens; and

296 (b) maintaining a database:

297 (i) of individuals who have registered to receive services described in Subsection
298 (19)(a) through the corporation;

299 (ii) that uses biometric security;

300 (iii) that permits participants in the database to have 24-hour access to the database
301 information; and

302 (iv) that is used by the state or a political subdivision of the state for regulatory
303 purposes, including the issuance of a driver's license, in return for payments made by the
304 corporation to the state or a political subdivision of the state.

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

306 **59-7-402. Water's edge combined report.**

307 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection
308 59-7-101[(33)] (35)(a) is doing business in Utah, the unitary group shall file a water's edge
309 combined report.

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

312 (i) doing business in Utah;

313 (ii) part of the same affiliated group; and

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

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

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

322 Section 4. **Retrospective operation.**

323 This bill has retrospective operation for taxable years beginning on or after January 1,
324 2005.

Legislative Review Note

as of 2-3-05 5:10 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0130

Income Tax Subtraction for Specialized Immigrant Services

14-Feb-05

2:02 PM

State Impact

No significant fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst