

Senator Wayne L. Niederhauser proposes the following substitute bill:

**INCOME TAXATION OF PASS-THROUGH
ENTITIES AND PASS-THROUGH ENTITY**

TAXPAYERS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: John Dougall

LONG TITLE

General Description:

This bill amends the Corporate Franchise and Income Taxes chapter and the Individual Income Tax Act to address the income taxation of a pass-through entity and a taxpayer to whom income, gain, loss, deduction, or credit of the pass-through entity is passed through.

Highlighted Provisions:

This bill:

- ▶ provides that corporate franchise and income taxes are imposed on an S corporation through the taxable year beginning on or after January 1, 2012, but beginning on or before December 31, 2012;

↗▶ requires the Revenue and Taxation Interim Committee to conduct a study and prescribes the scope of the study; ↖↗

- ▶ repeals provisions governing the taxation of a limited liability company;
- ▶ addresses the income taxation of a taxpayer to whom income, gain, loss, deduction, or credit of a pass-through entity is passed through;
- ▶ expands withholding requirements to provide that a pass-through entity, including a general partnership, limited partnership, limited liability partnership, limited liability company, or an S corporation, is required to pay or withhold a tax on behalf



- 26 of a resident or nonresident business entity or a nonresident individual;
- 27 ▶ provides exceptions to the withholding requirements;
- 28 ▶ provides withholding procedures;
- 29 ▶ addresses return filing requirements for a pass-through entity or a taxpayer to whom
- 30 income, gain, loss, deduction, or credit of a pass-through entity is passed through;
- 31 ▶ addresses the characterization of items of income, gain, loss, deduction, or credit for
- 32 purposes of state income taxation of a taxpayer to whom income, gain, loss,
- 33 deduction, or credit of a pass-through entity is passed through;
- 34 ▶ addresses the determination of a taxpayer's share of certain additions to income,
- 35 deductions from income, or adjustments to income required by state statute;
- 36 ▶ addresses a refundable tax credit for a taxpayer to whom income, gain, loss,
- 37 deduction, or credit of a pass-through entity is passed through; and
- 38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill provides an immediate effective date.

43 This bill has retrospective operation for a taxable year beginning on or after January 1,
44 2009.

44a **Ĥ→ This bill provides revisor instructions. ←Ĥ**

45 **Utah Code Sections Affected:**

46 AMENDS:

47 **59-7-101**, as last amended by Laws of Utah 2008, Chapters 382 and 389

48 **59-7-102**, as last amended by Laws of Utah 2002, Chapters 76 and 286

49 **59-7-106**, as last amended by Laws of Utah 2008, Chapter 389

50 **59-7-402**, as last amended by Laws of Utah 2008, Chapter 389

51 **59-7-701**, as last amended by Laws of Utah 1995, Chapter 311

52 **59-7-705**, as enacted by Laws of Utah 1993, Chapter 169

53 **59-7-706**, as enacted by Laws of Utah 1993, Chapter 169

54 **59-7-707**, as enacted by Laws of Utah 1993, Chapter 169

55 **59-10-103**, as last amended by Laws of Utah 2008, Chapters 382 and 389

56 **59-10-117**, as last amended by Laws of Utah 2008, Chapters 382 and 389

- 57 **59-10-507**, as last amended by Laws of Utah 2008, Chapter 389
- 58 **59-10-1103**, as renumbered and amended by Laws of Utah 2006, Chapter 223
- 59 **59-10-1401**, as enacted by Laws of Utah 2008, Chapter 389
- 60 **59-10-1402**, as enacted by Laws of Utah 2008, Chapter 389
- 61 **59-10-1403**, as renumbered and amended by Laws of Utah 2008, Chapter 389
- 62 **59-10-1404**, as renumbered and amended by Laws of Utah 2008, Chapter 389
- 63 **59-10-1405**, as renumbered and amended by Laws of Utah 2008, Chapter 389

64 ENACTS:

- 65 **59-7-614.4**, Utah Code Annotated 1953
- 66 **59-10-1403.1**, Utah Code Annotated 1953
- 67 **59-10-1403.2**, Utah Code Annotated 1953
- 68 **59-10-1404.5**, Utah Code Annotated 1953

69 REPEALS:

- 70 **48-2c-117**, as last amended by Laws of Utah 2008, Chapter 389
- 71 **59-7-702**, as last amended by Laws of Utah 2003, Chapter 110
- 72 **59-7-703**, as last amended by Laws of Utah 2008, Chapter 382
- 73 **59-7-704**, as enacted by Laws of Utah 1993, Chapter 169



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

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

77 **59-7-101. Definitions.**

78 As used in this chapter:

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

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

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

87 (ii) the common parent directly owns at least 80% of the stock of at least one of the

88 corporations in the group.

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

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

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

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

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

98 (6) (a) "Captive real estate investment trust" means a real estate investment trust if:

99 (i) the shares or beneficial interests of the real estate investment trust are not regularly
100 traded on an established securities market; and

101 (ii) more than 50% of the voting power or value of the shares or beneficial interests of
102 the real estate investment trust are directly, indirectly, or constructively:

103 (A) owned by a controlling entity of the real estate investment trust; or

104 (B) controlled by a controlling entity of the real estate investment trust.

105 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
106 commission may make rules defining "established securities market."

107 [~~8~~] (7) (a) "Common ownership" means the direct or indirect control or ownership of
108 more than 50% of the outstanding voting stock of:

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

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

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

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

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

118 (b) Ownership of outstanding voting stock shall be determined by Section 1563,

119 Internal Revenue Code.

120 ~~[(7)]~~ (8) (a) "Controlling entity of a captive real estate investment trust" means an
121 entity that:

122 (i) is treated as an association taxable as a corporation under the Internal Revenue
123 Code;

124 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue
125 Code; and

126 (iii) directly, indirectly, or constructively holds more than 50% of:

127 (A) the voting power of a captive real estate investment trust; or

128 (B) the value of the shares or beneficial interests of a captive real estate investment
129 trust.

130 (b) "Controlling entity of a captive real estate investment trust" does not include:

131 (i) a real estate investment trust, except for a captive real estate investment trust;

132 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal
133 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real
134 estate investment trust; or

135 (iii) a foreign real estate investment trust.

136 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
137 commission may make rules defining "established securities market."

138 (9) "Corporate return" or "return" includes a combined report.

139 (10) "Corporation" includes:

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

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

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

147 (12) (a) "Doing business" includes any transaction in the course of its business by a
148 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in
149 this state.

150 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:
151 (i) the right to do business through incorporation or qualification;
152 (ii) the owning, renting, or leasing of real or personal property within this state; and
153 (iii) the participation in joint ventures, working and operating agreements, the
154 performance of which takes place in this state.

155 (13) "Domestic corporation" means a corporation that is incorporated or organized
156 under the laws of this state.

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

159 (i) (A) an association, corporation, or other organization of:
160 (I) farmers; or
161 (II) fruit growers; or
162 (B) an association, corporation, or other organization that is similar to an association,
163 corporation, or organization described in Subsection (14)(a)(i)(A); and
164 (ii) organized and operated on a cooperative basis to:
165 (A) (I) market the products of members of the cooperative or the products of other
166 producers; and
167 (II) return to the members of the cooperative or other producers the proceeds of sales
168 less necessary marketing expenses on the basis of the quantity of the products of a member or
169 producer or the value of the products of a member or producer; or
170 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
171 other persons; and
172 (II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at
173 actual costs plus necessary expenses to the members of the cooperative or other persons.

174 (b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the
175 commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
176 Rulemaking Act, shall define:

177 (A) the terms:
178 (I) "member"; and
179 (II) "producer"; and
180 (B) what constitutes an association, corporation, or other organization that is similar to

181 an association, corporation, or organization described in Subsection (14)(a)(i)(A).

182 (ii) The rules made under this Subsection (14)(b) shall be consistent with the filing
183 requirements under federal law for a farmers' cooperative.

184 (15) "Foreign corporation" means a corporation that is not incorporated or organized
185 under the laws of this state.

186 (16) (a) "Foreign operating company" means a corporation that:

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

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

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

192 (17) (a) "Foreign real estate investment trust" means:

193 (i) a business entity organized outside the laws of the United States if:

194 (A) at least 75% of the business entity's total asset value at the close of the business
195 entity's taxable year is represented by:

196 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

197 (II) cash or cash equivalents; or

198 (III) one or more securities issued or guaranteed by the United States;

199 (B) the business entity is:

200 (I) not subject to income taxation:

201 (Aa) on amounts distributed to the business entity's beneficial owners; and

202 (Bb) in the jurisdiction in which the business entity is organized; or

203 (II) exempt from income taxation on an entity level in the jurisdiction in which the
204 business entity is organized;

205 (C) the business entity distributes at least 85% of the business entity's taxable income,
206 as computed in the jurisdiction in which the business entity is organized, to the holders of the
207 business entity's:

208 (I) shares or beneficial interests; and

209 (II) on an annual basis;

210 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively
211 by a single person:

212 (Aa) the voting power of the business entity; or
213 (Bb) the value of the shares or beneficial interests of the business entity; or
214 (II) the shares of the business entity are regularly traded on an established securities
215 market; and
216 (E) the business entity is organized in a country that has a tax treaty with the United
217 States; or
218 (ii) a listed Australian property trust.
219 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
220 commission may make rules defining:
221 (i) "cash or cash equivalents";
222 (ii) "established securities market"; or
223 (iii) "listed Australian property trust."
224 (18) "Income" includes losses.
225 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
226 during the year in which Utah taxable income is determined.
227 (20) "Nonbusiness income" is as defined in Section 59-7-302.
228 [~~(21) "Nonresident shareholder" means any shareholder of an S corporation who on the~~
229 ~~last day of the taxable year of the S corporation, is:~~
230 ~~[(a) an individual not domiciled in Utah; or]~~
231 ~~[(b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.]~~
232 [~~(22)~~ (21) "Real estate investment trust" is as defined in Section 856, Internal Revenue
233 Code.
234 [~~(23)~~ (22) "Related expenses" means:
235 (a) expenses directly attributable to nonbusiness income; and
236 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
237 and business income which bears the same ratio to the aggregate amount of such interest or
238 other expense, determined without regard to this Subsection [~~(23)~~ (22), as the average amount
239 of the asset producing the nonbusiness income bears to the average amount of all assets of the
240 taxpayer within the taxable year.
241 [~~(24) "Resident shareholder" means any shareholder of an S corporation who is not a~~
242 ~~nonresident shareholder.]~~

243 [~~(25)~~] (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
244 Section 168, Internal Revenue Code.

245 [~~(26)~~] (24) "S corporation" means an S corporation as defined in Section 1361, Internal
246 Revenue Code.

247 [~~(27)~~] (25) "State of the United States" includes any of the 50 states or the District of
248 Columbia.

249 [~~(28)~~] (26) (a) "Taxable year" means the calendar year or the fiscal year ending during
250 such calendar year upon the basis of which the adjusted income is computed.

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

254 [~~(29)~~] (27) "Taxpayer" means any corporation subject to the tax imposed by this
255 chapter.

256 [~~(30)~~] (28) "Threshold level of business activity" means business activity in the United
257 States equal to or greater than 20% of the corporation's total business activity as determined
258 under Section 59-7-401.

259 [~~(31)~~] (29) "Unadjusted income" means federal taxable income as determined on a
260 separate return basis before intercompany eliminations as determined by the Internal Revenue
261 Code, before the net operating loss deduction and special deductions for dividends received.

262 [~~(32)~~] (30) (a) "Unitary group" means a group of corporations that:

263 (i) are related through common ownership; and

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

267 (A) centralized management;

268 (B) functional integration; and

269 (C) economies of scale.

270 (b) "Unitary group" includes a captive real estate investment trust.

271 (c) "Unitary group" does not include an S corporation.

272 [~~(33)~~] (31) "United States" includes the 50 states and the District of Columbia.

273 [~~(34)~~] (32) "Utah net loss" means the current year Utah taxable income before Utah net

274 loss deduction, if determined to be less than zero.

275 ~~[(35)]~~ (33) "Utah net loss deduction" means the amount of Utah net losses from other
276 taxable years that may be carried back or carried forward to the current taxable year in
277 accordance with Section 59-7-110.

278 ~~[(36)]~~ (34) (a) "Utah taxable income" means Utah taxable income before net loss
279 deduction less Utah net loss deduction.

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

283 ~~[(37)]~~ (35) "Utah taxable income before net loss deduction" means apportioned income
284 plus nonbusiness income allocable to Utah net of related expenses.

285 ~~[(38)]~~ (36) (a) "Water's edge combined report" means a report combining the income
286 and activities of:

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

288 (A) corporations organized or incorporated in the United States, including those
289 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
290 936, Internal Revenue Code, in accordance with Subsection ~~[(38)]~~ (36)(b); and

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

293 (ii) an affiliated group electing to file a water's edge combined report under Subsection
294 59-7-402(2).

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

298 ~~[(39)]~~ (37) "Worldwide combined report" means the combination of the income and
299 activities of all members of a unitary group irrespective of the country in which the
300 corporations are incorporated or conduct business activity.

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

302 **59-7-102. Exemptions.**

303 (1) Except as provided in this section, the following are exempt from a tax under this
304 chapter:

- 305 (a) an organization exempt under Section 501, Internal Revenue Code;
- 306 (b) an organization exempt under Section 528, Internal Revenue Code;
- 307 (c) an insurance company that is otherwise taxed on the insurance company's premiums
- 308 under Chapter 9, Taxation of Admitted Insurers;
- 309 (d) a building authority as defined in Section 17A-3-902;
- 310 (e) a farmers' cooperative; or
- 311 (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an
- 312 ownership interest in:
- 313 (i) a project, as defined in Section 11-13-103; or
- 314 (ii) facilities providing additional project capacity, as defined in Section 11-13-103.
- 315 (2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts
- 316 Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a
- 317 person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to
- 318 ~~the~~ a tax imposed by ~~Sections~~ Section 59-7-104, 59-7-201, 59-7-701, ~~and~~ or 59-8-104,
- 319 because of:
- 320 (a) that person's ownership of tangible personal property located at the premises of a
- 321 printer's facility in this state with which the person has contracted for printing; or
- 322 (b) the activities of the person's employees or agents who are:
- 323 (i) located solely at the premises of a printer's facility; and
- 324 (ii) performing services:
- 325 (A) related to:
- 326 (I) quality control;
- 327 (II) distribution; or
- 328 (III) printing services; and
- 329 (B) performed by the printer's facility in this state with which the person has contracted
- 330 for printing.
- 331 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'
- 332 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part
- 333 8, Unrelated Business Income, to the extent provided in Part 8.
- 334 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization
- 335 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal

336 Revenue Code, the organization's income is also taxable under this chapter.

337 Section 3. Section **59-7-106** is amended to read:

338 **59-7-106. Subtractions from unadjusted income.**

339 In computing adjusted income the following amounts shall be subtracted from
340 unadjusted income:

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

343 (2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct
344 the loss on the current Utah return. The deduction shall be made by claiming the deduction on
345 the current Utah return which shall be filed by the due date of the return, including extensions.

346 For the purposes of this Subsection (2) all capital losses in a given year must be:

347 (a) deducted in the year incurred; or

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

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

352 (4) the decrease in qualified research and basic research expense deduction for federal
353 income tax purposes due to claiming the federal research and development credit under Section
354 41, Internal Revenue Code;

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

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

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

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

363 (9) amounts included in federal taxable income that are due to refunds of taxes
364 imposed for the privilege of doing business, or exercising a corporate franchise, including
365 income, franchise, corporate stock and business and occupation taxes paid by the corporation to
366 Utah, another state of the United States, a foreign country, a United States possession, or the

367 Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income
368 under Section 59-7-105;

369 (10) charitable contributions, to the extent allowed as a subtraction under Section
370 59-7-109;

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

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

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

387 (12) (a) 50% of the adjusted income of a foreign operating company unless the
388 taxpayer has elected to file a worldwide combined report as provided in Section 59-7-403. For
389 purposes of this Subsection (12), when calculating the adjusted income of a foreign operating
390 company, a foreign operating company may not deduct the subtractions allowable under this
391 Subsection (12) and Subsection (11);

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

395 (13) the amount of gain or loss which is included in unadjusted income but not
396 recognized for federal purposes on stock sold or exchanged by a member of a selling
397 consolidated group as defined in Section 338, Internal Revenue Code, if an election has been

398 made pursuant to Section 338(h)(10), Internal Revenue Code;

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

403 (15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and
404 similar items due to a difference between basis for federal purposes and basis as computed
405 under Section 59-7-107; and

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

409 (16) any interest expense not deducted on the federal corporate return under Section
410 265(b) or 291(e), Internal Revenue Code;

411 (17) 100% of the dividends received from subsidiaries which are insurance companies
412 exempt from this chapter under Subsection 59-7-102(1)(c) and are under ["common
413 ownership["as defined by Subsection 59-7-101(8)];

414 (18) subject to Subsection 59-7-105(12), the amount of a qualified investment as
415 defined in Section 53B-8a-102 that:

416 (a) a corporation that is an account owner as defined in Section 53B-8a-102 makes
417 during the taxable year;

418 (b) the corporation described in Subsection (18)(a) does not deduct on a federal
419 corporation income tax return; and

420 (c) does not exceed the maximum amount of the qualified investment that may be
421 subtracted from unadjusted income for a taxable year in accordance with Subsections
422 53B-8a-106(1)(d) and (f); and

423 (19) for purposes of income included in a combined report under Part 4, Combined
424 Reporting, the entire amount of the dividends a member of a unitary group receives or is
425 considered to receive from a captive real estate investment trust.

426 Section 4. Section **59-7-402** is amended to read:

427 **59-7-402. Water's edge combined report.**

428 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection

429 59-7-101[(38)](36)(a) is doing business in Utah, the unitary group shall file a water's edge
430 combined report.

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

433 (i) doing business in Utah;

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

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

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

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

443 Section 5. Section **59-7-614.4** is enacted to read:

444 **59-7-614.4. Tax credit for pass-through entity taxpayer.**

445 (1) As used in this section:

446 (a) "Pass-through entity" is as defined in Section 59-10-1402.

447 (b) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

448 (2) A pass-through entity taxpayer may claim a refundable tax credit against the tax
449 otherwise due under this chapter.

450 (3) The tax credit described in Subsection (2) is equal to the amount paid or withheld
451 by the pass-through entity on behalf of the pass-through entity taxpayer described in Subsection
452 (2) in accordance with Section 59-10-1403.2.

453 (4) A pass-through entity taxpayer may not claim a tax credit under this section for an
454 amount for which the pass-through entity taxpayer claims a tax credit under Section
455 59-10-1103.

456 Section 6. Section **59-7-701** is amended to read:

457 **59-7-701. Taxation of S corporations H→ -- Revenue and Taxation Interim Committee**
457a **study ←H .**

458 [Am] (1) Except as provided in Section 59-7-102 and subject to the other provisions of
459 this part, beginning on July 1, 1994, and ending on the last day of the taxable year that begins

460 on or after January 1, 2012, but begins on or before December 31, 2012, an S corporation[;
 461 except one described in Subsection 59-7-102(2), shall be taxed for state purposes] is subject to
 462 taxation in the same manner as that S corporation is taxed [for federal purposes as provided in
 463 Subtitle A, Chapter 1S] under Subchapter S - Tax Treatment of S Corporations and Their
 464 Shareholders, Sec. 1361 et seq., Internal Revenue Code[, and as modified by this chapter. The
 465 tax rate for S corporations shall be the rate provided for corporations under Section 59-7-104.
 466 Taxes owed under this section shall be subject to the estimated tax payments as provided in
 467 Section 59-7-504].

468 (2) An S corporation is taxed at the tax rate provided in Section 59-7-104.

469 (3) The business income and nonbusiness income of an S corporation is subject to Part
 470 3, Allocation and Apportionment of Income - Utah UDITPA Provisions.

471 (4) An S corporation having income derived from or connected with Utah sources shall
 472 make a return in accordance with Section 59-10-507.

473 (5) An S corporation shall make payments of estimated tax as required by Section
 474 59-7-504.

475 (6) An S corporation is subject to Chapter 10, Part 14, Pass-Through Entities and
 476 Pass-Through Entity Taxpayers Act.

477 (7) A pass-through entity taxpayer as defined in Section 59-10-1402 of an S
 478 corporation is subject to Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity
 479 Taxpayers Act.

480 (8) Provisions under this chapter governing the following apply to an S corporation:

481 (a) an assessment;

482 (b) a penalty;

483 (c) a refund; or

484 (d) a record required for an S corporation.

484a **Ĥ→ (9) (a) During the 2011 interim, the Revenue and Taxation Interim Committee shall**
 484b **study the fiscal impacts of:**

484c **(i) the enactment of this bill; and**

484d **(ii) the taxation of S corporations under this part.**

484e **(b) On or before November 30, 2011, the Revenue and Taxation Interim Committee**

484f **shall report its findings and recommendations on the study to the Executive Appropriations**
 484g **Committee. ←Ĥ**

485 Section 7. Section **59-7-705** is amended to read:

486 **59-7-705. Minimum tax not applicable to an S corporation.**

487 The minimum tax provided in Section 59-7-104 does not apply to [~~S corporations taxed~~
 488 ~~under this part] an S corporation subject to taxation under Section 59-7-701.~~

489 Section 8. Section **59-7-706** is amended to read:

490 **59-7-706. Distribution and credit of revenues.**

491 ~~[Any revenues]~~ Revenues collected or received by the commission under this part shall
492 be deposited daily with the state treasurer and distributed and credited as provided in Section
493 59-10-544.

494 Section 9. Section **59-7-707** is amended to read:

495 **59-7-707. Commission rulemaking authority.**

496 ~~[The]~~ In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
497 the commission may ~~[adopt]~~ make rules to implement this part.

498 Section 10. Section **59-10-103** is amended to read:

499 **59-10-103. Definitions.**

500 (1) As used in this chapter:

501 (a) "Adjusted gross income":

502 (i) for a resident or nonresident individual, is as defined in Section 62, Internal

503 Revenue Code; or

504 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),

505 Internal Revenue Code.

506 (b) "Corporation" includes:

507 (i) an association;

508 (ii) a joint stock company; and

509 (iii) an insurance company.

510 (c) "Distributable net income" is as defined in Section 643, Internal Revenue Code.

511 (d) "Employee" is as defined in Section 59-10-401.

512 (e) "Employer" is as defined in Section 59-10-401.

513 (f) "Federal taxable income":

514 (i) for a resident or nonresident individual, means taxable income as defined by Section

515 63, Internal Revenue Code; or

516 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and

517 (b), Internal Revenue Code.

518 (g) "Fiduciary" means:

519 (i) a guardian;

520 (ii) a trustee;

521 (iii) an executor;

- 522 (iv) an administrator;
- 523 (v) a receiver;
- 524 (vi) a conservator; or
- 525 (vii) any person acting in any fiduciary capacity for any individual.
- 526 (h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).
- 527 (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
- 528 homesteaded land that was held to have been diminished from the Uintah and Ouray
- 529 Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).
- 530 (j) "Individual" means a natural person and includes aliens and minors.
- 531 (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate
- 532 all or part of the trust without the consent of a person who has a substantial beneficial interest
- 533 in the trust and the interest would be adversely affected by the exercise of the settlor's power to
- 534 revoke or terminate all or part of the trust.
- 535 (l) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.
- 536 (m) "Nonresident individual" means an individual who is not a resident of this state.
- 537 (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
- 538 resident estate or trust.
- 539 (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
- 540 unincorporated organization:
- 541 (A) through or by means of which any business, financial operation, or venture is
- 542 carried on; and
- 543 (B) which is not, within the meaning of this chapter:
- 544 (I) a trust;
- 545 (II) an estate; or
- 546 (III) a corporation.
- 547 (ii) "Partnership" does not include any organization not included under the definition of
- 548 "partnership" in Section 761, Internal Revenue Code.
- 549 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
- 550 organization described in Subsection (1)(o)(i).
- 551 (p) "Qualified nongrantor charitable lead trust" means a trust:
- 552 (i) that is irrevocable;

- 553 (ii) that has a trust term measured by:
- 554 (A) a fixed term of years; or
- 555 (B) the life of a person living on the day on which the trust is created;
- 556 (iii) under which:
- 557 (A) a portion of the value of the trust assets is distributed during the trust term:
- 558 (I) to an organization described in Section 170(c), Internal Revenue Code; and
- 559 (II) as a:
- 560 (Aa) guaranteed annuity interest; or
- 561 (Bb) unitrust interest; and
- 562 (B) assets remaining in the trust at the termination of the trust term are distributed to a
- 563 beneficiary:
- 564 (I) designated in the trust; and
- 565 (II) that is not an organization described in Section 170(c), Internal Revenue Code;
- 566 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue
- 567 Code; and
- 568 (v) under which the grantor of the trust is not treated as the owner of any portion of the
- 569 trust for federal income tax purposes.
- 570 (q) (i) "Resident individual" means:
- 571 (A) an individual who is domiciled in this state for any period of time during the
- 572 taxable year, but only for the duration of the period during which the individual is domiciled in
- 573 this state; or
- 574 (B) an individual who is not domiciled in this state but:
- 575 (I) maintains a permanent place of abode in this state; and
- 576 (II) spends in the aggregate 183 or more days of the taxable year in this state.
- 577 (ii) For purposes of Subsection (1)(q)(i)(B), a fraction of a calendar day shall be
- 578 counted as a whole day.
- 579 (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.
- 580 (s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.
- 581 (t) "State income tax percentage for a nonresident estate or trust" means a percentage
- 582 equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the
- 583 nonresident estate's or trust's total adjusted gross income for that taxable year after making the

584 adjustments required by:

585 (i) Section 59-10-202;

586 (ii) Section 59-10-207;

587 (iii) Section 59-10-209.1; or

588 (iv) Section 59-10-210.

589 (u) "State income tax percentage for a nonresident individual" means a percentage
590 equal to a nonresident individual's state taxable income for the taxable year divided by the
591 difference between:

592 (i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross
593 income for that taxable year, after making the:

594 (A) additions and subtractions required by Section 59-10-114; and

595 (B) adjustments required by Section 59-10-115; and

596 (ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember,
597 the compensation the servicemember receives for military service if the servicemember is
598 serving in compliance with military orders.

599 (v) "State income tax percentage for a part-year resident individual" means, for a
600 taxable year, a fraction:

601 (i) the numerator of which is the sum of:

602 (A) subject to [~~Subsections 59-10-1404(3) and (4)~~] Section 59-10-1404.5, for the time
603 period during the taxable year that the part-year resident individual is a resident, the part-year
604 resident individual's total adjusted gross income for that time period, after making the:

605 (I) additions and subtractions required by Section 59-10-114; and

606 (II) adjustments required by Section 59-10-115; and

607 (B) for the time period during the taxable year that the part-year resident individual is a
608 nonresident, an amount calculated by:

609 (I) determining the part-year resident individual's adjusted gross income for that time
610 period, after making the:

611 (Aa) additions and subtractions required by Section 59-10-114; and

612 (Bb) adjustments required by Section 59-10-115; and

613 (II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I)
614 that is derived from Utah sources in accordance with Section 59-10-117; and

- 615 (ii) the denominator of which is the difference between:
- 616 (A) the part-year resident individual's total adjusted gross income for that taxable year,
- 617 after making the:
- 618 (I) additions and subtractions required by Section 59-10-114; and
- 619 (II) adjustments required by Section 59-10-115; and
- 620 (B) if the part-year resident individual is a servicemember, any compensation the
- 621 servicemember receives for military service during the portion of the taxable year that the
- 622 servicemember is a nonresident if the servicemember is serving in compliance with military
- 623 orders.
- 624 (w) "Taxable income" or "state taxable income":
- 625 (i) subject to [~~Subsection 59-10-1404(3)~~] Section 59-10-1404.5, for a resident
- 626 individual, means the resident individual's adjusted gross income after making the:
- 627 (A) additions and subtractions required by Section 59-10-114; and
- 628 (B) adjustments required by Section 59-10-115;
- 629 (ii) for a nonresident individual, is an amount calculated by:
- 630 (A) determining the nonresident individual's adjusted gross income for the taxable
- 631 year, after making the:
- 632 (I) additions and subtractions required by Section 59-10-114; and
- 633 (II) adjustments required by Section 59-10-115; and
- 634 (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A)
- 635 that is derived from Utah sources in accordance with Section 59-10-117;
- 636 (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and
- 637 (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.
- 638 (x) "Taxpayer" means any individual, estate, trust, or beneficiary of an estate or trust,
- 639 that has income subject in whole or part to the tax imposed by this chapter.
- 640 (y) "Trust term" means a time period:
- 641 (i) beginning on the day on which a qualified nongrantor charitable lead trust is
- 642 created; and
- 643 (ii) ending on the day on which the qualified nongrantor charitable lead trust described
- 644 in Subsection (1)(y)(i) terminates.
- 645 (z) "Uintah and Ouray Reservation" means the lands recognized as being included

646 within the Uintah and Ouray Reservation in:

647 (i) Hagen v. Utah, 510 U.S. 399 (1994); and

648 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

649 (aa) "Unadjusted income" means an amount equal to the difference between:

650 (i) the total income required to be reported by a resident or nonresident estate or trust
651 on the resident or nonresident estate's or trust's federal income tax return for estates and trusts
652 for the taxable year; and

653 (ii) the sum of the following:

654 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:

655 (I) for administering the resident or nonresident estate or trust; and

656 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or
657 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
658 year;

659 (B) the income distribution deduction that a resident or nonresident estate or trust
660 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or
661 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
662 year;

663 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for
664 estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as
665 allowed on the resident or nonresident estate's or trust's federal income tax return for estates
666 and trusts for the taxable year; and

667 (D) the amount that a resident or nonresident estate or trust deducts as a personal
668 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or
669 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
670 year.

671 (bb) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

672 (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute
673 Indian Tribe of the Uintah and Ouray Reservation.

674 (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

675 (ee) "Wages" is as defined in Section 59-10-401.

676 (2) (a) Any term used in this chapter has the same meaning as when used in

677 comparable context in the laws of the United States relating to federal income taxes unless a
678 different meaning is clearly required.

679 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
680 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
681 federal income taxes that are in effect for the taxable year.

682 (c) Any reference to a specific section of the Internal Revenue Code or other provision
683 of the laws of the United States relating to federal income taxes shall include any
684 corresponding or comparable provisions of the Internal Revenue Code as amended,
685 redesignated, or reenacted.

686 Section 11. Section **59-10-117** is amended to read:

687 **59-10-117. State taxable income derived from Utah sources.**

688 (1) For purposes of Section 59-10-116, state taxable income includes those items
689 includable in state taxable income attributable to or resulting from:

690 (a) the ownership in this state of any interest in real or tangible personal property,
691 including real property or property rights from which gross income from mining as defined by
692 Section 613(c), Internal Revenue Code, is derived; or

693 (b) the carrying on of a business, trade, profession, or occupation in this state.

694 (2) For the purposes of Subsection (1):

695 (a) income from intangible personal property, including annuities, dividends, interest,
696 and gains from the disposition of intangible personal property shall constitute income derived
697 from Utah sources only to the extent that the income is from property employed in a trade,
698 business, profession, or occupation carried on in this state;

699 (b) a deduction with respect to a capital loss, net long-term capital gain, or net operating
700 loss shall be based solely on income, gain, loss, and deduction connected with Utah sources,
701 under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah
702 Administrative Rulemaking Act, but otherwise shall be determined in the same manner as the
703 corresponding federal deductions;

704 (c) a salary, wage, commission, or compensation for personal services rendered outside
705 this state may not be considered to be derived from Utah sources;

706 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and
707 deduction derived from or connected with Utah sources shall be determined under Section

708 59-10-118;

709 (e) a nonresident, other than a dealer holding property primarily for sale to customers
710 in the ordinary course of the dealer's trade or business, may not be considered to carry on a
711 trade, business, profession, or occupation in this state solely by reason of the purchase or sale
712 of property for the nonresident's own account;

713 (f) if a trade, business, profession, or occupation is carried on partly within and partly
714 without this state, an item of income, gain, loss, or a deduction derived from or connected with
715 Utah sources shall be determined in accordance with Section 59-10-118;

716 (g) a nonresident partner's distributive share of partnership income, gain, loss, [~~and~~]
717 ~~deduction, or credit~~ derived from or connected with Utah sources shall be determined under
718 [~~Section 59-10-1405~~] Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act;

719 (h) the share of a nonresident estate or trust or a nonresident beneficiary of any estate
720 or trust in income, gain, loss, or deduction derived from or connected with Utah sources shall
721 be determined under Section 59-10-207; and

722 (i) any dividend, interest, or distributive share of income, gain, or loss from a real
723 estate investment trust, as defined in Section 59-7-101, distributed or allocated to a nonresident
724 investor in the trust, including any shareholder, beneficiary, or owner of a beneficial interest in
725 the trust, shall be income from intangible personal property under Subsection (2)(a), and shall
726 constitute income derived from Utah sources only to the extent the nonresident investor is
727 employing its beneficial interest in the trust in a trade, business, profession, or occupation
728 carried on by the investor in this state.

729 Section 12. Section **59-10-507** is amended to read:

730 **59-10-507. Return by a pass-through entity.**

731 (1) As used in this section:

732 (a) "Pass-through entity" is as defined in Section 59-10-1402.

733 (b) "Taxable year" means a year or other time period that would be a taxable year of a
734 pass-through entity if the pass-through entity were subject to taxation under this chapter.

735 (2) A pass-through entity having any income derived from or connected with Utah
736 sources [~~in this state~~] shall make a return for the taxable year as prescribed by the commission.

737 [~~(3) For purposes of Subsection (2), a pass-through entity's income derived from~~
738 ~~sources in this state shall be determined in accordance with the principles of Section~~

739 59-10-1405.]

740 Section 13. Section **59-10-1103** is amended to read:

741 **59-10-1103. Tax credit for pass-through entity taxpayer.**

742 [~~(1) (a) A nonresident shareholder of an S corporation]~~

743 (1) As used in this section:

744 (a) "Pass-through entity" is as defined in Section 59-10-1402.

745 (b) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

746 (2) A pass-through entity taxpayer may claim a refundable tax credit against the tax
 747 otherwise due under this chapter if that [nonresident shareholder] pass-through entity taxpayer
 748 is a:

749 [(i)] (a) [nonresident] claimant;

750 [(ii)] (b) [nonresident] estate; or

751 [(iii)] (c) [nonresident] trust.

752 [(b)] (3) The tax credit described in Subsection [(1)(a)] (2) is equal to the amount paid
 753 or withheld by the [S corporation] pass-through entity on behalf of the [nonresident
 754 shareholder] pass-through entity taxpayer described in Subsection [(1)(a)] (2) in accordance
 755 with Section [59-7-703] 59-10-1403.2.

756 ~~[(2) A nonresident shareholder described in Subsection (1)(a) that has no other Utah~~
 757 ~~source income may elect:]~~

758 ~~[(a) not to claim the tax credit provided in Subsection (1); and]~~

759 ~~[(b) not to file a tax return under this chapter for the taxable year.]~~

760 ~~[(3) If a nonresident shareholder described in Subsection (1)(a) may claim a~~
 761 ~~nonrefundable tax credit as defined in Section 59-10-1002 or a refundable tax credit other than~~
 762 ~~the tax credit described in Subsection (1), the nonresident shareholder described in Subsection~~
 763 ~~(1)(a) shall file a tax return under this chapter to claim those nonrefundable tax credits or~~
 764 ~~refundable tax credits.]~~

765 (4) A pass-through entity taxpayer may not claim a tax credit under this section for an
 766 amount for which the pass-through entity taxpayer claims a tax credit under Section
 767 59-7-614.4.

768 Section 14. Section **59-10-1401** is amended to read:

769 **Part 14. Pass-Through Entities and Pass-Through Entity Taxpayers Act**

770 **59-10-1401. Title.**

771 This part is known as the "~~Income Tax Treatment of~~ Pass-Through Entities and
772 Pass-Through Entity Taxpayers Act."

773 Section 15. Section **59-10-1402** is amended to read:

774 **59-10-1402. Definitions.**

775 As used in this part:

776 ~~[(1) "Limited liability company" includes a foreign limited liability company.]~~

777 (1) "Addition, subtraction, or adjustment" means:

778 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal
779 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes:

780 (i) an addition to unadjusted income described in Section 59-7-105; or

781 (ii) a subtraction from unadjusted income described in Section 59-7-106;

782 (b) for a pass-through entity taxpayer that is classified as an individual, partnership, or
783 S corporation for federal income tax purposes:

784 (i) an addition to or subtraction from adjusted gross income described in Section
785 59-10-114; or

786 (ii) an adjustment to adjusted gross income described in Section 59-10-115; or

787 (c) for a pass-through entity taxpayer that is classified as an estate or a trust for federal
788 income tax purposes:

789 (i) an addition to or subtraction from unadjusted income described in Section
790 59-10-202; or

791 (ii) an adjustment to unadjusted income described in Section 59-10-209.1.

792 (2) "Business income" means income arising from transactions and activity in the
793 regular course of a pass-through entity's trade or business and includes income from tangible
794 and intangible property if the acquisition, management, and disposition of the property
795 constitutes integral parts of the pass-through entity's regular trade or business operations.

796 (3) "C corporation" is as defined in Section 1361, Internal Revenue Code.

797 (4) "Commercial domicile" means the principal place from which the trade or business
798 of a business entity is directed or managed.

799 (5) "Derived from or connected with Utah sources" means:

800 (a) if a pass-through entity taxpayer is classified as a C corporation for federal income

801 tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part
 802 3, Allocation and Apportionment of Income - Utah UDITPA Provisions; or

803 (b) if a pass-through entity or pass-through entity taxpayer is classified as an estate,
 804 individual, partnership, S corporation, or a trust for federal income tax purposes, derived from
 805 or connected with Utah sources in accordance with Sections 59-10-117 and 59-10-118.

806 (6) "Nonbusiness income" means all income of a pass-through entity other than
 807 business income.

808 (7) "Nonresident business entity" means a business entity that does not have its
 809 commercial domicile in this state.

810 (8) "Nonresident pass-through entity taxpayer" means a pass-through entity taxpayer
 811 that is a:

812 (a) nonresident individual; or

813 (b) nonresident business entity.

814 ~~[(2)]~~ (9) (a) "Pass-through entity" means a business entity that is:

815 (i) the following if classified as a partnership for federal income tax purposes:

816 ~~[(i)]~~ (A) a general partnership;

817 ~~[(ii)]~~ (B) a limited liability company;

818 ~~[(iii)]~~ (C) a limited liability partnership; or

819 ~~[(iv)]~~ (D) a limited partnership; [or]

820 (ii) an S corporation; or

821 ~~[(v)]~~ (iii) a business entity similar to [Subsections (2)(a)(i) through (iv)] Subsection
 822 (9)(a)(i) or (ii):

823 (A) with respect to which the business entity's income [or losses are], gain, loss,
 824 deduction, or credit is divided among and passed through to [taxpayers] one or more
 825 pass-through entity taxpayers; and

826 (B) as defined by the commission by rule made in accordance with Title 63G, Chapter
 827 3, Utah Administrative Rulemaking Act.

828 (b) "Pass-through entity" does not include [a trust] an estate or trust that is classified as
 829 an estate or trust for federal income tax purposes.

830 ~~[(3) "Taxpayer" means:]~~

831 (10) "Pass-through entity taxpayer " means a resident or nonresident individual, a

832 resident or nonresident business entity, or a resident or nonresident estate or trust:

833 (a) that is:

834 ~~[(a)]~~ (i) for a general partnership, a partner;

835 ~~[(b)]~~ (ii) for a limited liability company, a member;

836 ~~[(c)]~~ (iii) for a limited liability partnership, a partner;

837 ~~[(d)]~~ (iv) for a limited partnership, a partner; [or]

838 (v) for an S corporation, a shareholder; or

839 ~~[(e)]~~ (vi) for a business entity described in Subsection ~~[(2)(a)(v)]~~ (9)(a)(iii), a member,

840 partner, shareholder, or other title designated by the commission by rule made in accordance

841 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[-]; and

842 (b) to which the income, gain, loss, deduction, or credit of a pass-through entity is

843 passed through.

844 (11) "Resident business entity" means a business entity that is not a nonresident

845 business entity.

846 (12) "Resident pass-through entity taxpayer" means a pass-through entity taxpayer that

847 is a:

848 (a) resident individual; or

849 (b) resident business entity.

850 (13) "Return" means a return that a pass-through entity taxpayer files:

851 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal

852 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or

853 (b) for a pass-through entity taxpayer that is classified as an estate, individual,

854 partnership, S corporation, or a trust for federal income tax purposes, under this chapter.

855 (14) "S corporation" is as defined in Section 1361, Internal Revenue Code.

856 (15) "Share of income, gain, loss, deduction, or credit of a pass-through entity" means:

857 (a) for a pass-through entity except for a pass-through entity that is an S corporation:

858 (i) for a resident pass-through entity taxpayer, the resident pass-through entity

859 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through

860 entity as determined under Section 704 et seq., Internal Revenue Code; and

861 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity

862 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through

863 entity:

864 (A) as determined under Section 704 et seq., Internal Revenue Code; and

865 (B) derived from or connected with Utah sources; or

866 (b) for an S corporation:

867 (i) for a resident pass-through entity taxpayer, the resident pass-through entity

868 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation, as

869 determined under Sec. 1366 et seq., Internal Revenue Code; or

870 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity

871 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation:

872 (A) as determined under Section 1366 et seq., Internal Revenue Code; and

873 (B) derived from or connected with Utah sources.

874 Section 16. Section **59-10-1403** is amended to read:

875 **59-10-1403. Income tax treatment of a pass-through entity -- Returns --**

876 **Classification same as under Internal Revenue Code.**

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

879 (2) The income [~~or losses~~], gain, loss, deduction, or credit of a pass-through entity shall
880 be [~~divided among and~~] passed through to one or more pass-through entity taxpayers as
881 provided in this part.

882 (3) A pass-through entity is subject to the return filing requirements of Section
883 59-10-507.

884 (4) A pass-through entity that [~~is a limited liability company that~~] transacts business in
885 the state shall be classified for purposes of taxation under this title in the same manner as the
886 [~~limited liability company~~] pass-through entity is classified for federal income tax purposes.

887 Section 17. Section **59-10-1403.1** is enacted to read:

888 **59-10-1403.1. Income tax treatment of a pass-through entity taxpayer.**

889 (1) Subject to the other provisions of this part, a pass-through entity taxpayer is subject
890 to taxation:

891 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal
892 income tax purposes:

893 (i) if that pass-through entity taxpayer is a resident pass-through entity taxpayer, as a

894 domestic corporation is taxed under Chapter 7, Corporate Franchise and Income Taxes; or

895 (ii) if that pass-through entity taxpayer is a nonresident pass-through entity taxpayer, as
896 a foreign corporation is taxed under Chapter 7, Corporate Franchise and Income Taxes; or

897 (b) for a pass-through entity taxpayer that is classified as an estate, individual,

898 partnership, S corporation, or a trust for federal income tax purposes:

899 (i) if that pass-through entity taxpayer is a resident pass-through entity taxpayer, as a
900 resident estate, resident individual, resident partnership, resident S corporation, or resident trust
901 is taxed under this chapter; or

902 (ii) if that pass-through entity taxpayer is a nonresident pass-through entity taxpayer, as
903 a nonresident estate, nonresident individual, nonresident partnership, nonresident S
904 corporation, or nonresident trust is taxed under this chapter.

905 (2) A pass-through entity taxpayer is subject to taxation on the pass-through entity
906 taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity.

907 (3) (a) Subject to Subsection (3)(b)(iii), a resident pass-through entity taxpayer shall
908 file a return:

909 (i) if the resident pass-through entity taxpayer is classified as a C corporation for
910 federal income tax purposes, as a domestic corporation under Chapter 7, Corporate Franchise
911 and Income Taxes; or

912 (ii) if the resident pass-through entity taxpayer is classified as an estate, individual,
913 partnership, S corporation, or a trust for federal income tax purposes, as a resident estate,
914 resident individual, resident partnership, resident S corporation, or resident trust under this
915 chapter.

916 (b) (i) Except as provided in Subsection (3)(b)(ii) and subject to Subsection (3)(b)(iii)
917 or (iv), a nonresident pass-through entity taxpayer shall file a return:

918 (A) if the nonresident pass-through entity taxpayer is classified as a C corporation for
919 federal income tax purposes, as a foreign corporation under Chapter 7, Corporate Franchise and
920 Income Taxes; or

921 (B) if the nonresident pass-through entity taxpayer is classified as an estate, individual,
922 partnership, S corporation, or a trust for federal income tax purposes, as a nonresident estate,
923 nonresident individual, nonresident partnership, nonresident S corporation, or nonresident trust
924 under this chapter.

- 925 (ii) A nonresident pass-through entity taxpayer is not required to file a return if:
926 (A) the nonresident pass-through entity taxpayer does not have:
927 (I) for a nonresident pass-through entity taxpayer that is classified as a C corporation
928 for federal income tax purposes, unadjusted income as defined in Section 59-7-101 derived
929 from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's
930 share of income, gain, loss, deduction, or credit of the pass-through entity;
931 (II) for a nonresident pass-through entity taxpayer that is classified as an individual,
932 partnership, or S corporation for federal income tax purposes, adjusted gross income derived
933 from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's
934 share of income, gain, loss, deduction, or credit of the pass-through entity; or
935 (III) for a nonresident pass-through entity taxpayer that is classified as an estate or a
936 trust for federal income tax purposes, unadjusted income as defined in Section 59-10-103
937 derived from or connected with Utah sources, except for the nonresident pass-through entity
938 taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity;
939 (B) the nonresident pass-through entity taxpayer does not seek to claim a tax credit
940 allowed against a tax imposed under:
941 (I) Chapter 7, Corporate Franchise and Income Taxes; or
942 (II) this chapter;
943 (C) the pass-through entity pays or withholds a tax on behalf of the nonresident
944 pass-through entity taxpayer and remits that tax to the commission:
945 (I) in accordance with Section 59-10-1403.2; and
946 (II) if a nonresident pass-through entity taxpayer is classified as a C corporation for
947 federal income tax purposes, in an amount that is equal to or greater than the minimum tax
948 under Section 59-7-104; and
949 (D) the nonresident pass-through entity taxpayer is not a member of a unitary group as
950 defined in Section 59-7-101 that is required to file a return in this state.
951 (iii) A nonresident pass-through entity taxpayer that is not otherwise required to file a
952 return under this Subsection (3) may file a return under:
953 (A) Chapter 7, Corporate Franchise and Income Taxes; or
954 (B) this chapter.
955 (iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

956 the commission may make rules for a pass-through entity taxpayer, except for a pass-through
 957 entity taxpayer who is a resident individual, to file a return under this section if two or more
 958 pass-through entities pay or withhold a tax in accordance with Section 59-10-1403.2 on behalf
 959 of the pass-through entity taxpayer.

960 Section 18. Section **59-10-1403.2** is enacted to read:

961 **59-10-1403.2. Pass-through entity payment or withholding of tax on behalf of a**
 962 **pass-through entity taxpayer -- Exceptions to payment or withholding requirement --**
 963 **Procedures and requirements -- Failure to pay or withhold a tax on behalf of a**
 964 **pass-through entity taxpayer.**

965 (1) (a) Except as provided in Subsection (1)(b), for a taxable year, a pass-through entity
 966 shall pay or withhold a tax:

967 (i) on:

968 (A) the business income of the pass-through entity; and

969 (B) the nonbusiness income of the pass-through entity derived from or connected with

970 Utah sources; and

971 (ii) on behalf of a pass-through entity taxpayer.

972 (b) A pass-through entity is not required to pay or withhold a tax under Subsection

973 (1)(a):

974 (i) on behalf of a pass-through entity taxpayer who is a resident individual; ~~§~~ → [or] ← ~~§~~

975 (ii) if the pass-through entity is an organization exempt from taxation under Subsection

976 59-7-102(1)(a) ~~§~~ → [] ; or

976a **(iii) if the pass-through entity is a publicly traded partnership:**

976b **(A) as defined in Section 7704(b), Internal Revenue Code;**

976c **(B) that is classified as a partnership for federal income tax purposes; and**

976d **(C) that files an annual information return reporting the following with respect to each**

976e **partner of the publicly traded partnership with income derived from or connected with Utah**

976f **sources that exceeds \$500 in a taxable year:**

976g **(I) the partner's name;**

976h **(II) the partner's address;**

976i **(III) the partner's taxpayer identification number; and**

976j **(IV) other information required by the commission. ← ~~§~~**

977 (2) (a) Subject to Subsection (2)(b), the tax a pass-through entity shall pay or withhold

978 on behalf of a pass-through entity taxpayer for a taxable year is an amount:

979 (i) determined by the commission by rule made in accordance with Title 63G, Chapter

980 3, Utah Administrative Rulemaking Act; and

981 (ii) that the commission estimates will be sufficient to pay the tax liability of the
982 pass-through entity taxpayer under this chapter with respect to the income described in
983 Subsection (1)(a)(i) of that pass-through entity for the taxable year.

984 (b) The rules the commission makes in accordance with Subsection (2)(a):

985 (i) except as provided in Subsection (2)(c):

986 (A) shall:

987 (I) for a pass-through entity except for a pass-through entity that is an S corporation,
988 take into account items of income, gain, loss, deduction, and credit as analyzed on the schedule
989 for reporting partners' distributive share items as part of the federal income tax return for the
990 pass-through entity; or

991 (II) for a pass-through entity that is an S corporation, take into account items of
992 income, gain, loss, deduction, and credit as reconciled on the schedule for reporting
993 shareholders' pro rata share items as part of the federal income tax return for the pass-through
994 entity; and

995 (B) notwithstanding Subsection (2)(b)(ii)(D), take into account the refundable tax
996 credit provided in Section 59-6-102; and

997 (ii) may not take into account the following items if taking those items into account
998 does not result in an accurate estimate of a pass-through entity taxpayer's tax liability under this
999 chapter for the taxable year:

1000 (A) a capital loss;

1001 (B) a passive loss;

1002 (C) another item of deduction or loss if that item of deduction or loss is generally
1003 subject to significant reduction or limitation in calculating:

1004 (I) for a pass-through entity taxpayer that is classified as a C corporation for federal
1005 income tax purposes, unadjusted income as defined in Section 59-7-101;

1006 (II) for a pass-through entity that is classified as an individual, partnership, or S
1007 corporation for federal income tax purposes, adjusted gross income; or

1008 (III) for a pass-through entity that is classified as an estate or a trust for federal income
1009 tax purposes, unadjusted income as defined in Section 59-10-103; or

1010 (D) a tax credit allowed against a tax imposed under:

1011 (I) Chapter 7, Corporate Franchise and Income Taxes; or

1012 (II) this chapter.

1013 (c) The rules the commission makes in accordance with Subsection (2)(a) may
1014 establish a method for taking into account items of income, gain, loss, deduction, or credit of a
1015 pass-through entity if:

1016 (i) for a pass-through entity except for a pass-through entity that is an S corporation,
1017 the pass-through entity does not analyze the items of income, gain, loss, deduction, or credit on

1018 the schedule for reporting partners' distributive share items as part of the federal income tax
1019 return for the pass-through entity; or

1020 (ii) for a pass-through entity that is an S corporation, the pass-through entity does not
1021 reconcile the items of income, gain, loss, deduction, or credit on the schedule for reporting
1022 shareholders' pro rata share items as part of the federal income tax return for the pass-through
1023 entity.

1024 (3) A pass-through entity shall remit to the commission the tax the pass-through entity
1025 pays or withholds on behalf of a pass-through entity taxpayer under this section:

1026 (a) on or before the due date of the pass-through entity's return, not including
1027 extensions; and

1028 (b) on a form provided by the commission.

1029 (4) A pass-through entity shall provide a statement to a pass-through entity taxpayer on
1030 behalf of whom the pass-through entity pays or withholds a tax under this section showing the
1031 amount of tax the pass-through entity pays or withholds under this section for the taxable year
1032 on behalf of the pass-through entity taxpayer.

1033 (5) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not collect an
1034 amount under this section for a taxable year from a pass-through entity and shall waive a
1035 penalty or interest on that amount if:

1036 (a) the pass-through entity fails to pay or withhold the tax on the amount as required by
1037 this section on behalf of the pass-through entity taxpayer;

1038 (b) the pass-through entity taxpayer:

1039 (i) files a return on or before the due date for filing the pass-through entity's return,
1040 including extensions; and

1041 (ii) on or before the due date including extensions described in Subsection (5)(b)(i),
1042 pays the tax on the amount for the taxable year:

1043 (A) if the pass-through entity taxpayer is classified as a C corporation for federal
1044 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or

1045 (B) if the pass-through entity taxpayer is classified as an estate, individual, partnership,
1046 S corporation, or a trust for federal income tax purposes, under this chapter; and

1047 (c) the pass-through entity applies to the commission.

1048 Section 19. Section **59-10-1404** is amended to read:

1049 **59-10-1404. Character of an item of income, gain, loss, deduction, or credit.**

1050 [~~(1) Each item of income, gain, loss, or deduction of a pass-through entity has the same~~
1051 ~~character for a taxpayer under this chapter as that item of income, gain, loss, or deduction has~~
1052 ~~for federal income tax purposes.]~~

1053 [~~(2) If~~ Regardless of whether or how an item of income, gain, loss, [or] deduction
1054 [described in Subsection (1) is not], or credit is characterized for federal income tax purposes,
1055 that item of income, gain, loss, [or] deduction [has the same character for a taxpayer], or credit
1056 is from the same source and incurred in the same manner for a pass-through entity taxpayer as
1057 if the item of income, gain, loss, [or] deduction, or credit is:

1058 [~~(a)~~ (1) realized directly from the source from which the item of income, gain, loss,
1059 [or] deduction, or credit is realized by the pass-through entity; or

1060 [~~(b)~~ (2) incurred in the same manner as incurred by the pass-through entity.

1061 [~~(3) In determining state taxable income of a resident taxpayer, any addition or~~
1062 ~~subtraction described in Section 59-10-114 that relates to an item of income, gain, loss, or~~
1063 ~~deduction of a pass-through entity shall be made in accordance with the taxpayer's distributive~~
1064 ~~share:]~~

1065 [~~(a) of the item to which the addition or subtraction relates; and]~~

1066 [~~(b) for federal income tax purposes.]~~

1067 [~~(4) If a taxpayer's distributive share of an item of income, gain, loss, or deduction~~
1068 ~~described in Subsection (3) is not required to be taken into account separately for federal~~
1069 ~~income tax purposes, the taxpayer's distributive share of that item of income, gain, loss, or~~
1070 ~~deduction shall be determined in accordance with that taxpayer's distributive share:]~~

1071 [~~(a) of income or loss relating to the pass-through entity generally; and]~~

1072 [~~(b) for federal income tax purposes.]~~

1073 Section 20. Section **59-10-1404.5** is enacted to read:

1074 **59-10-1404.5. Resident pass-through entity taxpayer's share of an addition,**
1075 **subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or**
1076 **credit of a pass-through entity.**

1077 (1) In determining the taxable income of a resident pass-through entity taxpayer, an
1078 addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or
1079 credit of a pass-through entity shall be made in accordance with this section.

1080 (2) For a resident pass-through entity taxpayer of a pass-through entity except for a
1081 pass-through entity that is an S corporation, the resident pass-through entity taxpayer's share of
1082 an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction,
1083 or credit is:

1084 (a) if the item of income, gain, loss, deduction, or credit is required to be taken into
1085 account separately for federal income tax purposes, the resident pass-through entity taxpayer's
1086 distributive share of the item of income, gain, loss, deduction, or credit:

1087 (i) for federal income tax purposes; and

1088 (ii) determined under Section 704 et seq., Internal Revenue Code; or

1089 (b) if the item of income, gain, loss, deduction, or credit is not required to be taken into
1090 account separately for federal income tax purposes, determined in accordance with the resident
1091 pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit:

1092 (i) relating to the pass-through entity generally;

1093 (ii) for federal income tax purposes; and

1094 (iii) under Section 704 et seq., Internal Revenue Code.

1095 (3) For a resident pass-through entity taxpayer of a pass-through entity that is an S
1096 corporation, the resident pass-through entity taxpayer's share of an addition, subtraction, or
1097 adjustment that relates to an item of income, gain, loss, deduction, or credit is:

1098 (a) if the item of income, gain, loss, deduction, or credit is required to be taken into
1099 account separately for federal income tax purposes, the resident pass-through entity taxpayer's
1100 pro rata share of the item of income, gain, loss, deduction, or credit:

1101 (i) for federal income tax purposes; and

1102 (ii) determined under Section 1366 et seq., Internal Revenue Code; or

1103 (b) if the item of income, gain, loss, deduction, or credit is not required to be taken into
1104 account separately for federal income tax purposes, determined in accordance with the resident
1105 pass-through entity taxpayer's pro rata share of the item of income, gain, loss, deduction, or
1106 credit:

1107 (i) relating to the pass-through entity generally;

1108 (ii) for federal income tax purposes; and

1109 (iii) under Section 1366 et seq., Internal Revenue Code.

1110 Section 21. Section **59-10-1405** is amended to read:

1111 **59-10-1405. Nonresident pass-through entity taxpayer's share of an addition,**
1112 **subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or**
1113 **credit of a pass-through entity -- In determining source of nonresident pass-through**
1114 **entity taxpayer's income certain provisions of pass-through entity agreement may not be**
1115 **considered -- Rulemaking authority.**

1116 ~~[(1) Subject to Subsection (2), the adjusted gross income of a nonresident taxpayer~~
1117 ~~shall be adjusted by only that portion of the taxpayer's distributive share of an item of income,~~
1118 ~~gain, loss, or deduction of a pass-through entity derived from or connected with sources in this~~
1119 ~~state.]~~

1120 ~~[(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
1121 ~~the commission may make rules for determining the adjustment required by Subsection (1) if~~
1122 ~~those rules are consistent with the principles of Section 59-10-116.]~~

1123 (1) (a) Except as provided in Subsection (3), in determining the taxable income of a
1124 nonresident pass-through entity taxpayer, an addition, subtraction, or adjustment that relates to
1125 an item of income, gain, loss, deduction, or credit of a pass-through entity shall be made in
1126 accordance with this Subsection (1).

1127 (b) For a nonresident pass-through entity taxpayer of a pass-through entity except for a
1128 pass-through entity that is an S corporation, the nonresident pass-through entity taxpayer's
1129 share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss,
1130 deduction, or credit is:

1131 (i) if the item of income, gain, loss, deduction, or credit is required to be taken into
1132 account separately for federal income tax purposes, the nonresident pass-through entity
1133 taxpayer's distributive share of the item of income, gain, loss, deduction, or credit:

1134 (A) for federal income tax purposes;

1135 (B) determined under Section 704 et seq., Internal Revenue Code; and

1136 (C) derived from or connected with Utah sources; or

1137 (ii) if the item of income, gain, loss, deduction, or credit is not required to be taken into
1138 account separately for federal income tax purposes, determined in accordance with the
1139 nonresident pass-through entity taxpayer's distributive share of income, gain, loss, deduction,
1140 or credit:

1141 (A) relating to the pass-through entity generally;

1142 (B) for federal income tax purposes;
 1143 (C) under Section 704 et seq., Internal Revenue Code; and
 1144 (D) derived from or connected with Utah sources.
 1145 (c) For a nonresident pass-through entity taxpayer of a pass-through entity that is an S
 1146 corporation, the nonresident pass-through entity taxpayer's share of an addition, subtraction, or
 1147 adjustment that relates to an item of income, gain, loss, deduction, or credit is:
 1148 (i) if the item of income, gain, loss, deduction, or credit is required to be taken into
 1149 account separately for federal income tax purposes, the nonresident pass-through entity
 1150 taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:
 1151 (A) for federal income tax purposes;
 1152 (B) determined under Section 1366 et seq., Internal Revenue Code; and
 1153 (C) derived from or connected with Utah sources; or
 1154 (ii) if the item of income, gain, loss, deduction, or credit is not required to be taken into
 1155 account separately for federal income tax purposes, determined in accordance with the
 1156 nonresident pass-through entity taxpayer's pro rata share of the item of income, gain, loss,
 1157 deduction, or credit:
 1158 (A) relating to the pass-through entity generally;
 1159 (B) for federal income tax purposes;
 1160 (C) under Section 1366 et seq., Internal Revenue Code; and
 1161 (D) derived from or connected with Utah sources.
 1162 ~~[(3)]~~ (2) In determining the source of a nonresident pass-through entity taxpayer's
 1163 income, the following provisions in a pass-through entity agreement may not be considered:
 1164 ~~[(a) a provision that characterizes a payment to the taxpayer as being for:]~~
 1165 ~~[(i) a service; or]~~
 1166 ~~[(ii) the use of capital;]~~
 1167 ~~[(b) except as provided in Subsection (5);]~~
 1168 (a) a provision that allocates to the nonresident pass-through entity taxpayer, as income
 1169 ~~[or]~~, gain, or credit from a source outside this state, a greater proportion of the nonresident
 1170 pass-through entity taxpayer's ~~[distributive]~~ share of income ~~[or]~~, gain, or credit of the
 1171 pass-through entity than the ratio of income ~~[or]~~, gain, or credit of the pass-through entity from
 1172 sources outside this state to income ~~[or]~~, gain, or credit of the pass-through entity from all

1173 sources; or

1174 ~~[(c) except as provided in Subsection (5);]~~

1175 (b) a provision that allocates to the nonresident pass-through entity taxpayer a greater
1176 proportion of an item of loss or deduction of the pass-through entity derived from or connected
1177 with Utah sources ~~[in this state]~~ than the taxpayer's ~~[proportionate]~~ share of loss or deduction
1178 generally:

1179 (i) relating to the pass-through entity; and

1180 (ii) for federal income tax purposes.

1181 ~~[(4) Any addition or subtraction described in Section 59-10-114 that relates to an item~~
1182 ~~of income, gain, loss, or deduction of a pass-through entity shall be made in accordance with~~
1183 ~~the taxpayer's distributive share:]~~

1184 ~~[(a) of the portion of the item of income, gain, loss, or deduction required to be added~~
1185 ~~or subtracted under Section 59-10-114 that is derived from or connected with sources in the~~
1186 ~~state; and]~~

1187 ~~[(b) for federal income tax purposes.]~~

1188 ~~[(5)(a) Subject to Subsection (5)(b), the]~~

1189 (3) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah
1190 Administrative Rulemaking Act, ~~[authorize the use of one or more methods, other than a~~
1191 ~~method described in Subsections (1) through (4), for determining: (i) a nonresident taxpayer's~~
1192 ~~portion of an]~~ authorize the use of a calculation other than the calculation provided in
1193 Subsection (1), for determining a nonresident pass-through entity taxpayer's share of an
1194 addition, subtraction, or adjustment that relates to an item of income, gain, loss, ~~[or]~~ deduction,
1195 or credit of a pass-through entity derived from or connected with ~~[sources in the state; and]~~
1196 Utah sources if:

1197 ~~[(ii) the portion of an item of income, gain, loss, or deduction required to be added or~~
1198 ~~subtracted under Section 59-10-114 that is derived from or connected with sources in the state.]~~

1199 ~~[(b) For purposes of Subsection (5)(a), the commission may authorize the use of one or~~
1200 ~~more methods, other than a method described in Subsections (1) through (4), if:]~~

1201 ~~[(i) the commission finds that the use of the method is appropriate and equitable; and]~~

1202 ~~[(ii) the taxpayer applies to the commission.]~~

1203 ~~[(6)(a) A nonresident taxpayer's distributive share of an item of income, gain, loss, or~~

1204 ~~deduction shall be determined in accordance with the principles of Subsections 59-10-1404(3)~~
 1205 ~~and (4).]~~

1206 ~~[(b) The character of an item of income, gain, loss, or deduction for a nonresident~~
 1207 ~~taxpayer shall be determined in accordance with the principles of Subsections 59-10-1404(1)~~
 1208 ~~and (2).]~~

1209 (a) the nonresident pass-through entity taxpayer applies to the commission; and
 1210 (b) the commission finds that the use of the calculation is appropriate and equitable.

1211 **Section 22. Repealer.**

1212 This bill repeals:

1213 Section **48-2c-117, Taxation of limited liability companies.**

1214 Section **59-7-702, Taxation of shareholders.**

1215 Section **59-7-703, Payment or withholding of tax on behalf of nonresident**

1216 **shareholders -- Rate.**

1217 Section **59-7-704, Amount taxable.**

1218 Section 23. **Effective date -- Retrospective operation.**

1219 This bill:

1220 (1) if approved by two-thirds of all the members elected to each house, takes effect
 1221 upon approval by the governor, or the day following the constitutional time limit of Utah
 1222 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
 1223 the date of veto override; and

1224 (2) has retrospective operation for a taxable year beginning on or after January 1, 2009.

1224a **Ĥ→ Section 24. Revisor instructions.**

1224b **It is the intent of the Legislature that, in preparing the Utah Code database for publication, the**

1224c **Office of Legislative Research and General Counsel shall replace the reference in Subsection**

1224d **59-7-701(9) from "this bill" to the bill's designated chapter and section number in the Laws of**

1224e **Utah.** ←Ĥ

Fiscal Note**S.B. 23 1st Sub. (Green) - Income Taxation of Pass-through Entities and Pass-through Entity Taxpayers - As Amended**

2009 General Session

State of Utah

State Impact

Enactment of this bill could increase revenue to the Education Fund by \$678,300 in FY 2010 and \$710,000 in FY 2011. Beginning in FY 2012, there will be a loss in revenue to the Education Fund of \$2,200,000 annually. The Tax Commission will require an appropriation of \$80,000 to enforce the provisions of the bill. This would be one auditor.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$45,500	\$45,500	\$0	\$0	\$0
Education Fund	\$0	\$34,500	\$34,500	\$0	\$710,000	\$710,000
Education Fund, One-Time	\$0	\$0	\$0	\$0	(\$31,700)	\$0
Total	\$0	\$80,000	\$80,000	\$0	\$678,300	\$710,000

Individual, Business and/or Local Impact

Individuals with built in and other gains could experience a decrease in taxes owed of \$3,000,000 beginning in FY 2012. Non-resident individuals will be subject to withholding. If the non-resident taxpayers decide not to file for the withholding that has taken place during the year, there could be an increase in taxes on these individuals of \$678,300 in FY 2010 and \$710,000 in FY 2011. S-Corporation businesses with non-resident shareholders will be required to withhold. Businesses structured as s-corporations with built in and other gains could experience a decrease of the amount mentioned above. Locals are unaffected.