

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

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: _____

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

The Utah Tax Review Commission recommended this bill.

Membership: 6 legislators 10 non-legislators

Legislative Vote: 10 voting for 0 voting against 6 absent

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:

- ▶ repeals corporate franchise and income taxes on an S corporation;
- ▶ 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



28 liability company, or an S corporation, is required to pay or withhold a tax on behalf of a
29 resident or nonresident business entity or a nonresident individual;

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

42 **Monies Appropriated in this Bill:**

43 None

44 **Other Special Clauses:**

45 This bill provides an immediate effective date.

46 This bill has retrospective operation for a taxable year beginning on or after January 1,
47 2009.

48 **Utah Code Sections Affected:**

49 AMENDS:

50 **59-7-101**, as last amended by Laws of Utah 2008, Chapters 382 and 389

51 **59-7-102**, as last amended by Laws of Utah 2002, Chapters 76 and 286

52 **59-7-106**, as last amended by Laws of Utah 2008, Chapter 389

53 **59-7-402**, as last amended by Laws of Utah 2008, Chapter 389

54 **59-10-103**, as last amended by Laws of Utah 2008, Chapters 382 and 389

55 **59-10-117**, as last amended by Laws of Utah 2008, Chapters 382 and 389

56 **59-10-507**, as last amended by Laws of Utah 2008, Chapter 389

57 **59-10-1103**, as renumbered and amended by Laws of Utah 2006, Chapter 223

58 **59-10-1401**, as enacted by Laws of Utah 2008, Chapter 389

- 59 **59-10-1402**, as enacted by Laws of Utah 2008, Chapter 389
- 60 **59-10-1403**, as renumbered and amended by Laws of Utah 2008, Chapter 389
- 61 **59-10-1404**, as renumbered and amended by Laws of Utah 2008, Chapter 389
- 62 **59-10-1405**, as renumbered and amended by Laws of Utah 2008, Chapter 389

63 ENACTS:

- 64 **59-10-1403.1**, Utah Code Annotated 1953
- 65 **59-10-1403.2**, Utah Code Annotated 1953
- 66 **59-10-1404.5**, Utah Code Annotated 1953

67 REPEALS:

- 68 **48-2c-117**, as last amended by Laws of Utah 2008, Chapter 389
- 69 **59-7-701**, as last amended by Laws of Utah 1995, Chapter 311
- 70 **59-7-702**, as last amended by Laws of Utah 2003, Chapter 110
- 71 **59-7-703**, as last amended by Laws of Utah 2008, Chapter 382
- 72 **59-7-704**, as enacted by Laws of Utah 1993, Chapter 169
- 73 **59-7-705**, as enacted by Laws of Utah 1993, Chapter 169
- 74 **59-7-706**, as enacted by Laws of Utah 1993, Chapter 169
- 75 **59-7-707**, as enacted by Laws of Utah 1993, Chapter 169



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

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

79 **59-7-101. Definitions.**

80 As used in this chapter:

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

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

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

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

90 corporations in the group.

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

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

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

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

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

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

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

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

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

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

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

109 [~~8~~] (7) (a) "Common ownership" means the direct or indirect control or ownership of
110 more than 50% of the outstanding voting stock of:

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

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

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

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

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

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

121 Internal Revenue Code.

122 ~~[(7)]~~ (8) (a) "Controlling entity of a captive real estate investment trust" means an
123 entity that:

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

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

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

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

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

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

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

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

137 (iii) a foreign real estate investment trust.

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

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

141 (10) "Corporation" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

199 (II) cash or cash equivalents; or

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

201 (B) the business entity is:

202 (I) not subject to income taxation:

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

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

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

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

210 (I) shares or beneficial interests; and

211 (II) on an annual basis;

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

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

245 ~~[(25)]~~ (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
246 Section 168, Internal Revenue Code.

247 ~~[(26)]~~ (24) "S corporation" means an S corporation as defined in Section 1361, Internal
248 Revenue Code.

249 ~~[(27)]~~ (25) "State of the United States" includes any of the 50 states or the District of
250 Columbia.

251 ~~[(28)]~~ (26) (a) "Taxable year" means the calendar year or the fiscal year ending during
252 such calendar year upon the basis of which the adjusted income is computed.

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

256 ~~[(29)]~~ (27) "Taxpayer" means any corporation subject to the tax imposed by this
257 chapter.

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

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

264 ~~[(32)]~~ (30) (a) "Unitary group" means a group of corporations that:

265 (i) are related through common ownership; and

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

269 (A) centralized management;

270 (B) functional integration; and

271 (C) economies of scale.

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

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

274 ~~[(33)]~~ (31) "United States" includes the 50 states and the District of Columbia.

275 ~~[(34)]~~ (32) "Utah net loss" means the current year Utah taxable income before Utah net

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

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

280 ~~[(36)]~~ (34) (a) "Utah taxable income" means Utah taxable income before net loss
281 deduction less Utah net loss deduction.

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

285 ~~[(37)]~~ (35) "Utah taxable income before net loss deduction" means apportioned income
286 plus nonbusiness income allocable to Utah net of related expenses.

287 ~~[(38)]~~ (36) (a) "Water's edge combined report" means a report combining the income
288 and activities of:

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

290 (A) corporations organized or incorporated in the United States, including those
291 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
292 936, Internal Revenue Code, in accordance with Subsection ~~[(38)]~~ (36)(b); and

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

295 (ii) an affiliated group electing to file a water's edge combined report under Subsection
296 59-7-402(2).

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

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

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

304 **59-7-102. Exemptions.**

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

- 307 (a) an organization exempt under Section 501, Internal Revenue Code;
- 308 (b) an organization exempt under Section 528, Internal Revenue Code;
- 309 (c) an insurance company that is otherwise taxed on the insurance company's premiums
- 310 under Chapter 9, Taxation of Admitted Insurers;
- 311 (d) a building authority as defined in Section 17A-3-902;
- 312 (e) a farmers' cooperative; ~~or~~
- 313 (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an
- 314 ownership interest in:
- 315 (i) a project, as defined in Section 11-13-103; or
- 316 (ii) facilities providing additional project capacity, as defined in Section 11-13-103[-];
- 317 or
- 318 (g) an S corporation.
- 319 (2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts
- 320 Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a
- 321 person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to
- 322 the tax imposed by Sections 59-7-104, 59-7-201, [~~59-7-701,~~] and 59-8-104, because of:
- 323 (a) that person's ownership of tangible personal property located at the premises of a
- 324 printer's facility in this state with which the person has contracted for printing; or
- 325 (b) the activities of the person's employees or agents who are:
- 326 (i) located solely at the premises of a printer's facility; and
- 327 (ii) performing services:
- 328 (A) related to:
- 329 (I) quality control;
- 330 (II) distribution; or
- 331 (III) printing services; and
- 332 (B) performed by the printer's facility in this state with which the person has contracted
- 333 for printing.
- 334 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'
- 335 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part
- 336 8, Unrelated Business Income, to the extent provided in Part 8.
- 337 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization

338 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal
339 Revenue Code, the organization's income is also taxable under this chapter.

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

341 **59-7-106. Subtractions from unadjusted income.**

342 In computing adjusted income the following amounts shall be subtracted from
343 unadjusted income:

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

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

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

350 (a) deducted in the year incurred; or

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

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

355 (4) the decrease in qualified research and basic research expense deduction for federal
356 income tax purposes due to claiming the federal research and development credit under Section
357 41, Internal Revenue Code;

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

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

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

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

366 (9) amounts included in federal taxable income that are due to refunds of taxes
367 imposed for the privilege of doing business, or exercising a corporate franchise, including
368 income, franchise, corporate stock and business and occupation taxes paid by the corporation to

369 Utah, another state of the United States, a foreign country, a United States possession, or the
370 Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income
371 under Section 59-7-105;

372 (10) charitable contributions, to the extent allowed as a subtraction under Section
373 59-7-109;

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

377 In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the
378 dividends deemed received or received, the expense directly attributable to those dividends.

379 Interest expense attributable to excluded dividends shall be determined by multiplying interest
380 expense by a fraction, the numerator of which is the taxpayer's average investment in such
381 dividend paying subsidiaries, and the denominator of which is the taxpayer's average total
382 investment in assets;

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

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

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

398 (13) the amount of gain or loss which is included in unadjusted income but not
399 recognized for federal purposes on stock sold or exchanged by a member of a selling

400 consolidated group as defined in Section 338, Internal Revenue Code, if an election has been
401 made pursuant to Section 338(h)(10), Internal Revenue Code;

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

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

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

412 (16) any interest expense not deducted on the federal corporate return under Section
413 265(b) or 291(e), Internal Revenue Code;

414 (17) 100% of the dividends received from subsidiaries which are insurance companies
415 exempt from this chapter under Subsection 59-7-102(1)(c) and are under ["common
416 ownership]" ~~as defined by Subsection 59-7-101(8)~~];

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

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

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

423 (c) does not exceed the maximum amount of the qualified investment that may be
424 subtracted from unadjusted income for a taxable year in accordance with Subsections
425 53B-8a-106(1)(d) and (f); and

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

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

430 **59-7-402. Water's edge combined report.**

431 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection
432 59-7-101[(38)](36)(a) is doing business in Utah, the unitary group shall file a water's edge
433 combined report.

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

436 (i) doing business in Utah;

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

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

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

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

446 Section 5. Section **59-10-103** is amended to read:

447 **59-10-103. Definitions.**

448 (1) As used in this chapter:

449 (a) "Adjusted gross income":

450 (i) for a resident or nonresident individual, is as defined in Section 62, Internal
451 Revenue Code; or

452 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),
453 Internal Revenue Code.

454 (b) "Corporation" includes:

455 (i) an association;

456 (ii) a joint stock company; and

457 (iii) an insurance company.

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

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

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

461 (f) "Federal taxable income":

462 (i) for a resident or nonresident individual, means taxable income as defined by Section
463 63, Internal Revenue Code; or

464 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
465 (b), Internal Revenue Code.

466 (g) "Fiduciary" means:

467 (i) a guardian;

468 (ii) a trustee;

469 (iii) an executor;

470 (iv) an administrator;

471 (v) a receiver;

472 (vi) a conservator; or

473 (vii) any person acting in any fiduciary capacity for any individual.

474 (h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

475 (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
476 homesteaded land that was held to have been diminished from the Uintah and Ouray
477 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

478 (j) "Individual" means a natural person and includes aliens and minors.

479 (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate
480 all or part of the trust without the consent of a person who has a substantial beneficial interest
481 in the trust and the interest would be adversely affected by the exercise of the settlor's power to
482 revoke or terminate all or part of the trust.

483 (l) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.

484 (m) "Nonresident individual" means an individual who is not a resident of this state.

485 (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
486 resident estate or trust.

487 (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
488 unincorporated organization:

489 (A) through or by means of which any business, financial operation, or venture is
490 carried on; and

491 (B) which is not, within the meaning of this chapter:

492 (I) a trust;

- 493 (II) an estate; or
494 (III) a corporation.
- 495 (ii) "Partnership" does not include any organization not included under the definition of
496 "partnership" in Section 761, Internal Revenue Code.
- 497 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
498 organization described in Subsection (1)(o)(i).
- 499 (p) "Qualified nongrantor charitable lead trust" means a trust:
- 500 (i) that is irrevocable;
501 (ii) that has a trust term measured by:
502 (A) a fixed term of years; or
503 (B) the life of a person living on the day on which the trust is created;
- 504 (iii) under which:
505 (A) a portion of the value of the trust assets is distributed during the trust term:
506 (I) to an organization described in Section 170(c), Internal Revenue Code; and
507 (II) as a:
508 (Aa) guaranteed annuity interest; or
509 (Bb) unitrust interest; and
510 (B) assets remaining in the trust at the termination of the trust term are distributed to a
511 beneficiary:
512 (I) designated in the trust; and
513 (II) that is not an organization described in Section 170(c), Internal Revenue Code;
514 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue
515 Code; and
516 (v) under which the grantor of the trust is not treated as the owner of any portion of the
517 trust for federal income tax purposes.
- 518 (q) (i) "Resident individual" means:
519 (A) an individual who is domiciled in this state for any period of time during the
520 taxable year, but only for the duration of the period during which the individual is domiciled in
521 this state; or
522 (B) an individual who is not domiciled in this state but:
523 (I) maintains a permanent place of abode in this state; and

- 524 (II) spends in the aggregate 183 or more days of the taxable year in this state.
- 525 (ii) For purposes of Subsection (1)(q)(i)(B), a fraction of a calendar day shall be
- 526 counted as a whole day.
- 527 (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.
- 528 (s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.
- 529 (t) "State income tax percentage for a nonresident estate or trust" means a percentage
- 530 equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the
- 531 nonresident estate's or trust's total adjusted gross income for that taxable year after making the
- 532 adjustments required by:
 - 533 (i) Section 59-10-202;
 - 534 (ii) Section 59-10-207;
 - 535 (iii) Section 59-10-209.1; or
 - 536 (iv) Section 59-10-210.
- 537 (u) "State income tax percentage for a nonresident individual" means a percentage
- 538 equal to a nonresident individual's state taxable income for the taxable year divided by the
- 539 difference between:
 - 540 (i) subject to Section 59-12-1405, the nonresident individual's total adjusted gross
 - 541 income for that taxable year, after making the:
 - 542 (A) additions and subtractions required by Section 59-10-114; and
 - 543 (B) adjustments required by Section 59-10-115; and
 - 544 (ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember,
 - 545 the compensation the servicemember receives for military service if the servicemember is
 - 546 serving in compliance with military orders.
- 547 (v) "State income tax percentage for a part-year resident individual" means, for a
- 548 taxable year, a fraction:
 - 549 (i) the numerator of which is the sum of:
 - 550 (A) subject to [~~Subsections 59-10-1404(3) and (4)~~] Section 59-10-1404.5, for the time
 - 551 period during the taxable year that the part-year resident individual is a resident, the part-year
 - 552 resident individual's total adjusted gross income for that time period, after making the:
 - 553 (I) additions and subtractions required by Section 59-10-114; and
 - 554 (II) adjustments required by Section 59-10-115; and

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

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

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

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

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

563 (ii) the denominator of which is the difference between:

564 (A) the part-year resident individual's total adjusted gross income for that taxable year,
565 after making the:

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

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

568 (B) if the part-year resident individual is a servicemember, any compensation the
569 servicemember receives for military service during the portion of the taxable year that the
570 servicemember is a nonresident if the servicemember is serving in compliance with military
571 orders.

572 (w) "Taxable income" or "state taxable income":

573 (i) subject to [~~Subsection 59-10-1404(3)~~] Section 59-10-1404.5, for a resident
574 individual, means the resident individual's adjusted gross income after making the:

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

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

577 (ii) for a nonresident individual, is an amount calculated by:

578 (A) determining the nonresident individual's adjusted gross income for the taxable
579 year, after making the:

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

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

582 (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A)
583 that is derived from Utah sources in accordance with Section 59-10-117;

584 (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

585 (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.

586 (x) "Taxpayer" means any individual, estate, trust, or beneficiary of an estate or trust,
587 that has income subject in whole or part to the tax imposed by this chapter.

588 (y) "Trust term" means a time period:

589 (i) beginning on the day on which a qualified nongrantor charitable lead trust is
590 created; and

591 (ii) ending on the day on which the qualified nongrantor charitable lead trust described
592 in Subsection (1)(y)(i) terminates.

593 (z) "Uintah and Ouray Reservation" means the lands recognized as being included
594 within the Uintah and Ouray Reservation in:

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

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

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

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

601 (ii) the sum of the following:

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

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

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

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

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

615 (D) the amount that a resident or nonresident estate or trust deducts as a personal
616 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or

617 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
618 year.

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

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

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

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

624 (2) (a) Any term used in this chapter has the same meaning as when used in
625 comparable context in the laws of the United States relating to federal income taxes unless a
626 different meaning is clearly required.

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

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

634 Section 6. Section **59-10-117** is amended to read:

635 **59-10-117. State taxable income derived from Utah sources.**

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

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

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

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

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

647 (b) a deduction with respect to a capital loss, net long-term capital gain, or net operating

648 loss shall be based solely on income, gain, loss, and deduction connected with Utah sources,
649 under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah
650 Administrative Rulemaking Act, but otherwise shall be determined in the same manner as the
651 corresponding federal deductions;

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

654 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and
655 deduction derived from or connected with Utah sources shall be determined under Section
656 59-10-118;

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

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

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

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

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

677 Section 7. Section ~~59-10-507~~ is amended to read:

678 **59-10-507. Return by a pass-through entity.**

679 (1) As used in this section:

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

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

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

685 ~~[(3) For purposes of Subsection (2), a pass-through entity's income derived from~~
686 ~~sources in this state shall be determined in accordance with the principles of Section~~
687 ~~59-10-1405.]~~

688 Section 8. Section **59-10-1103** is amended to read:

689 **59-10-1103. Tax credit for pass-through entity taxpayer.**

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

691 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

708 ~~[(3) If a nonresident shareholder described in Subsection (1)(a) may claim a~~
709 ~~nonrefundable tax credit as defined in Section 59-10-1002 or a refundable tax credit other than~~

710 the tax credit described in Subsection (1), the nonresident shareholder described in Subsection
711 (1)(a) shall file a tax return under this chapter to claim those nonrefundable tax credits or
712 refundable tax credits.]

713 Section 9. Section **59-10-1401** is amended to read:

714 **Part 14. Pass-Through Entities and Pass-Through Entity Taxpayers Act**
715 **59-10-1401. Title.**

716 This part is known as the "[~~Income Tax Treatment of~~] Pass-Through Entities and
717 Pass-Through Entity Taxpayers Act."

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

719 **59-10-1402. Definitions.**

720 As used in this part:

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

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

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

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

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

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

729 (i) an addition to or subtraction from adjusted gross income described in Section
730 59-10-114; or

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

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

734 (i) an addition to or subtraction from unadjusted income described in Section
735 59-10-202; or

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

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

- 741 (3) "C corporation" is as defined in Section 1361, Internal Revenue Code.
- 742 (4) "Commercial domicile" means the principal place from which the trade or business
 743 of a business entity is directed or managed.
- 744 (5) "Derived from or connected with Utah sources" means:
- 745 (a) if a pass-through entity taxpayer is classified as a C corporation for federal income
 746 tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part
 747 3, Allocation and Apportionment of Income -- Utah UDITPA Provisions; or
- 748 (b) if a pass-through entity or pass-through entity taxpayer is classified as an estate,
 749 individual, partnership, S corporation, or a trust for federal income tax purposes, derived from
 750 or connected with Utah sources in accordance with Sections 59-10-117 and 59-10-118.
- 751 (6) "Nonbusiness income" means all income of a pass-through entity other than
 752 business income.
- 753 (7) "Nonresident business entity" means a business entity that does not have its
 754 commercial domicile in this state.
- 755 (8) "Nonresident pass-through entity taxpayer" means a pass-through entity taxpayer
 756 that is a:
- 757 (a) nonresident individual; or
- 758 (b) nonresident business entity.
- 759 ~~[(2)]~~ (9) (a) "Pass-through entity" means a business entity that is:
- 760 (i) the following if classified as a partnership for federal income tax purposes:
- 761 ~~[(i)]~~ (A) a general partnership;
- 762 ~~[(ii)]~~ (B) a limited liability company;
- 763 ~~[(iii)]~~ (C) a limited liability partnership; or
- 764 ~~[(iv)]~~ (D) a limited partnership; ~~or~~
- 765 (ii) an S corporation; or
- 766 ~~[(v)]~~ (iii) a business entity similar to ~~Subsections (2)(a)(i) through (iv)]~~ Subsection
 767 (9)(a)(i) or (ii):
- 768 (A) with respect to which the business entity's income ~~or losses are~~, gain, loss,
 769 deduction, or credit is divided among and passed through to ~~taxpayers~~ one or more
 770 pass-through entity taxpayers; and
- 771 (B) as defined by the commission by rule made in accordance with Title 63G, Chapter

772 3, Utah Administrative Rulemaking Act.

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

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

776 (10) "Pass-through entity taxpayer " means a resident or nonresident individual, a
777 resident or nonresident business entity, or a resident or nonresident estate or trust:

778 (a) that is:

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

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

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

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

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

784 ~~[(e)]~~ (vi) for a business entity described in Subsection ~~[(2)(a)(v)]~~ (9)(a)(iii), a member,
785 partner, shareholder, or other title designated by the commission by rule made in accordance
786 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[-]; and

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

789 (11) "Resident business entity" means a business entity that is not a nonresident
790 business entity.

791 (12) "Resident pass-through entity taxpayer" means a pass-through entity taxpayer that
792 is a:

793 (a) resident individual; or

794 (b) resident business entity.

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

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

798 (b) for a pass-through entity taxpayer that is classified as an estate, individual,
799 partnership, S corporation, or a trust for federal income tax purposes, under this chapter.

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

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

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

803 (i) for a resident pass-through entity taxpayer, the resident pass-through entity
 804 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through
 805 entity as determined under Section 704 et seq., Internal Revenue Code; and

806 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity
 807 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through
 808 entity:

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

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

811 (b) for an S corporation:

812 (i) for a resident pass-through entity taxpayer, the resident pass-through entity
 813 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation, as
 814 determined under Sec. 1366 et seq., Internal Revenue Code; or

815 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity
 816 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation:

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

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

819 Section 11. Section **59-10-1403** is amended to read:

820 **59-10-1403. Income tax treatment of a pass-through entity -- Returns --**

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

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

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

827 (3) A pass-through entity is subject to the return filing requirements of Section
 828 59-10-507.

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

832 Section 12. Section **59-10-1403.1** is enacted to read:

833 **59-10-1403.1. Income tax treatment of a pass-through entity taxpayer.**

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

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

838 (i) if that pass-through entity taxpayer is a resident pass-through entity taxpayer, as a
839 domestic corporation is taxed under Chapter 7, Corporate Franchise and Income Taxes; or

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

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

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

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

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

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

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

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

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

863 (A) if the nonresident pass-through entity taxpayer is classified as a C corporation for
864 federal income tax purposes, as a foreign corporation under Chapter 7, Corporate Franchise and

865 Income Taxes; or

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

870 (ii) A nonresident pass-through entity taxpayer is not required to file a return if:

871 (A) the nonresident pass-through entity taxpayer does not have:

872 (I) for a nonresident pass-through entity taxpayer that is classified as a C corporation
873 for federal income tax purposes, unadjusted income as defined in Section 59-7-101 derived
874 from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's
875 share of income, gain, loss, deduction, or credit of the pass-through entity;

876 (II) for a nonresident pass-through entity taxpayer that is classified as an individual,
877 partnership, or S corporation for federal income tax purposes, adjusted gross income derived
878 from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's
879 share of income, gain, loss, deduction, or credit of the pass-through entity; or

880 (III) for a nonresident pass-through entity taxpayer that is classified as an estate or a
881 trust for federal income tax purposes, unadjusted income as defined in Section 59-10-103
882 derived from or connected with Utah sources, except for the nonresident pass-through entity
883 taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity;

884 (B) the nonresident pass-through entity taxpayer does not seek to claim a tax credit
885 allowed against a tax imposed under:

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

887 (II) this chapter;

888 (C) the pass-through entity pays or withholds a tax on behalf of the nonresident
889 pass-through entity taxpayer and remits that tax to the commission:

890 (I) in accordance with Section 59-10-1403.2; and

891 (II) if a nonresident pass-through entity taxpayer is classified as a C corporation for
892 federal income tax purposes, in an amount that is equal to or greater than the minimum tax
893 under Section 59-7-104; and

894 (D) the nonresident pass-through entity taxpayer is not a member of a unitary group as
895 defined in Section 59-7-101 that is required to file a return in this state.

896 (iii) A nonresident pass-through entity taxpayer that is not otherwise required to file a
897 return under this Subsection (3) may file a return under:

898 (A) Chapter 7, Corporate Franchise and Income Taxes; or

899 (B) this chapter.

900 (iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
901 the commission may make rules for a pass-through entity taxpayer, except for a pass-through
902 entity taxpayer who is a resident individual, to file a return under this section if two or more
903 pass-through entities pay or withhold a tax in accordance with Section 59-10-1403.2 on behalf
904 of the pass-through entity taxpayer.

905 Section 13. Section **59-10-1403.2** is enacted to read:

906 **59-10-1403.2. Pass-through entity payment or withholding of tax on behalf of a**
907 **pass-through entity taxpayer -- Exceptions to payment or withholding requirement --**
908 **Procedures and requirements -- Failure to pay or withhold a tax on behalf of a**
909 **pass-through entity taxpayer.**

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

912 (i) on:

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

914 (B) the nonbusiness income of the pass-through entity derived from or connected with
915 Utah sources; and

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

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

918 (1)(a):

919 (i) on behalf of a pass-through entity taxpayer who is a resident individual; or

920 (ii) if the pass-through entity is an organization exempt from taxation under Subsection
921 59-7-102(1)(a).

922 (2) (a) Subject to Subsection (2)(b), the tax a pass-through entity shall pay or withhold
923 on behalf of a pass-through entity taxpayer for a taxable year is an amount:

924 (i) determined by the commission by rule made in accordance with Title 63G, Chapter
925 3, Utah Administrative Rulemaking Act; and

926 (ii) that the commission estimates will be sufficient to pay the tax liability of the

927 pass-through entity taxpayer under this chapter with respect to the income described in
928 Subsection (1)(a)(i) of that pass-through entity for the taxable year.

929 (b) The rules the commission makes in accordance with Subsection (2)(a):
930 (i) except as provided in Subsection (2)(c):
931 (A) shall:
932 (I) for a pass-through entity except for a pass-through entity that is an S corporation,
933 take into account items of income, gain, loss, deduction, and credit as analyzed on the schedule
934 for reporting partners' distributive share items as part of the federal income tax return for the
935 pass-through entity; or
936 (II) for a pass-through entity that is an S corporation, take into account items of
937 income, gain, loss, deduction, and credit as reconciled on the schedule for reporting
938 shareholders' pro rata share items as part of the federal income tax return for the pass-through
939 entity; and
940 (B) notwithstanding Subsection (2)(b)(ii)(D), take into account the refundable tax
941 credit provided in Section 59-6-102; and
942 (ii) may not take into account the following items if taking those items into account
943 does not result in an accurate estimate of a pass-through entity taxpayer's tax liability under this
944 chapter for the taxable year:
945 (A) a capital loss;
946 (B) a passive loss;
947 (C) another item of deduction or loss if that item of deduction or loss is generally
948 subject to significant reduction or limitation in calculating:
949 (I) for a pass-through entity taxpayer that is classified as a C corporation for federal
950 income tax purposes, unadjusted income as defined in Section 59-7-101;
951 (II) for a pass-through entity that is classified as an individual, partnership, or S
952 corporation for federal income tax purposes, adjusted gross income; or
953 (III) for a pass-through entity that is classified as an estate or a trust for federal income
954 tax purposes, unadjusted income as defined in Section 59-10-103; or
955 (D) a tax credit allowed against a tax imposed under:
956 (I) Chapter 7, Corporate Franchise and Income Taxes; or
957 (II) this chapter.

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

961 (i) for a pass-through entity except for a pass-through entity that is an S corporation,
962 the pass-through entity does not analyze the items of income, gain, loss, deduction, or credit on
963 the schedule for reporting partners' distributive share items as part of the federal income tax
964 return for the pass-through entity; or

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

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

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

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

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

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

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

983 (b) the pass-through entity taxpayer:

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

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

988 (A) if the pass-through entity taxpayer is classified as a C corporation for federal

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

990 (B) if the pass-through entity taxpayer is classified as an estate, individual, partnership,

991 S corporation, or a trust for federal income tax purposes, under this chapter; and

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

993 Section 14. Section **59-10-1404** is amended to read:

994 **59-10-1404. Character of an item of income, gain, loss, deduction, or credit.**

995 ~~[(1) Each item of income, gain, loss, or deduction of a pass-through entity has the same~~

996 ~~character for a taxpayer under this chapter as that item of income, gain, loss, or deduction has~~

997 ~~for federal income tax purposes.]~~

998 ~~[(2) If] Regardless of whether or how an item of income, gain, loss, [or] deduction~~

999 ~~[described in Subsection (1) is not], or credit is characterized for federal income tax purposes,~~

1000 ~~that item of income, gain, loss, [or] deduction [has the same character for a taxpayer], or credit~~

1001 ~~is from the same source and incurred in the same manner for a pass-through entity taxpayer as~~

1002 ~~if the item of income, gain, loss, [or] deduction, or credit is:~~

1003 ~~[(a)] (1) realized directly from the source from which the item of income, gain, loss,~~

1004 ~~[or] deduction, or credit is realized by the pass-through entity; or~~

1005 ~~[(b)] (2) incurred in the same manner as incurred by the pass-through entity.~~

1006 ~~[(3) In determining state taxable income of a resident taxpayer, any addition or~~

1007 ~~subtraction described in Section 59-10-114 that relates to an item of income, gain, loss, or~~

1008 ~~deduction of a pass-through entity shall be made in accordance with the taxpayer's distributive~~

1009 ~~share:]~~

1010 ~~[(a) of the item to which the addition or subtraction relates; and]~~

1011 ~~[(b) for federal income tax purposes.]~~

1012 ~~[(4) If a taxpayer's distributive share of an item of income, gain, loss, or deduction~~

1013 ~~described in Subsection (3) is not required to be taken into account separately for federal~~

1014 ~~income tax purposes, the taxpayer's distributive share of that item of income, gain, loss, or~~

1015 ~~deduction shall be determined in accordance with that taxpayer's distributive share:]~~

1016 ~~[(a) of income or loss relating to the pass-through entity generally; and]~~

1017 ~~[(b) for federal income tax purposes.]~~

1018 Section 15. Section **59-10-1404.5** is enacted to read:

1019 **59-10-1404.5. Resident pass-through entity taxpayer's share of an addition,**

1020 **subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or**
1021 **credit of a pass-through entity.**

1022 (1) In determining the taxable income of a resident pass-through entity taxpayer, an
1023 addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or
1024 credit of a pass-through entity shall be made in accordance with this section.

1025 (2) For a resident pass-through entity taxpayer of a pass-through entity except for a
1026 pass-through entity that is an S corporation, the resident pass-through entity taxpayer's share of
1027 an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction,
1028 or credit is:

1029 (a) if the item of income, gain, loss, deduction, or credit is required to be taken into
1030 account separately for federal income tax purposes, the resident pass-through entity taxpayer's
1031 distributive share of the item of income, gain, loss, deduction, or credit:

1032 (i) for federal income tax purposes; and

1033 (ii) determined under Section 704 et seq., Internal Revenue Code; or

1034 (b) if the item of income, gain, loss, deduction, or credit is not required to be taken into
1035 account separately for federal income tax purposes, determined in accordance with the resident
1036 pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit:

1037 (i) relating to the pass-through entity generally;

1038 (ii) for federal income tax purposes; and

1039 (iii) under Section 704 et seq., Internal Revenue Code.

1040 (3) For a resident pass-through entity taxpayer of a pass-through entity that is an S
1041 corporation, the resident pass-through entity taxpayer's share of an addition, subtraction, or
1042 adjustment that relates to an item of income, gain, loss, deduction, or credit is:

1043 (a) if the item of income, gain, loss, deduction, or credit is required to be taken into
1044 account separately for federal income tax purposes, the resident pass-through entity taxpayer's
1045 pro rata share of the item of income, gain, loss, deduction, or credit:

1046 (i) for federal income tax purposes; and

1047 (ii) determined under Section 1366 et seq., Internal Revenue Code; or

1048 (b) if the item of income, gain, loss, deduction, or credit is not required to be taken into
1049 account separately for federal income tax purposes, determined in accordance with the resident
1050 pass-through entity taxpayer's pro rata share of the item of income, gain, loss, deduction, or

1051 credit:

1052 (i) relating to the pass-through entity generally;

1053 (ii) for federal income tax purposes; and

1054 (iii) under Section 1366 et seq., Internal Revenue Code.

1055 Section 16. Section **59-10-1405** is amended to read:

1056 **59-10-1405. Nonresident pass-through entity taxpayer's share of an addition,**
 1057 **subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or**
 1058 **credit of a pass-through entity -- In determining source of nonresident pass-through**
 1059 **entity taxpayer's income certain provisions of pass-through entity agreement may not be**
 1060 **considered -- Rulemaking authority.**

1061 ~~[(1) Subject to Subsection (2), the adjusted gross income of a nonresident taxpayer~~
 1062 ~~shall be adjusted by only that portion of the taxpayer's distributive share of an item of income,~~
 1063 ~~gain, loss, or deduction of a pass-through entity derived from or connected with sources in this~~
 1064 ~~state.]~~

1065 ~~[(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
 1066 ~~the commission may make rules for determining the adjustment required by Subsection (1) if~~
 1067 ~~those rules are consistent with the principles of Section 59-10-116.]~~

1068 (1) (a) Except as provided in Subsection (3), in determining the taxable income of a
 1069 nonresident pass-through entity taxpayer, an addition, subtraction, or adjustment that relates to
 1070 an item of income, gain, loss, deduction, or credit of a pass-through entity shall be made in
 1071 accordance with this Subsection (1).

1072 (b) For a nonresident pass-through entity taxpayer of a pass-through entity except for a
 1073 pass-through entity that is an S corporation, the nonresident pass-through entity taxpayer's
 1074 share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss,
 1075 deduction, or credit is:

1076 (i) if the item of income, gain, loss, deduction, or credit is required to be taken into
 1077 account separately for federal income tax purposes, the nonresident pass-through entity
 1078 taxpayer's distributive share of the item of income, gain, loss, deduction, or credit:

1079 (A) for federal income tax purposes;

1080 (B) determined under Section 704 et seq., Internal Revenue Code; and

1081 (C) derived from or connected with Utah sources; or

1082 (ii) if the item of income, gain, loss, deduction, or credit is not required to be taken into
 1083 account separately for federal income tax purposes, determined in accordance with the
 1084 nonresident pass-through entity taxpayer's distributive share of income, gain, loss, deduction,
 1085 or credit:

1086 (A) relating to the pass-through entity generally;
 1087 (B) for federal income tax purposes;
 1088 (C) under Section 704 et seq., Internal Revenue Code; and
 1089 (D) derived from or connected with Utah sources.

1090 (c) For a nonresident pass-through entity taxpayer of a pass-through entity that is an S
 1091 corporation, the nonresident pass-through entity taxpayer's share of an addition, subtraction, or
 1092 adjustment that relates to an item of income, gain, loss, deduction, or credit is:

1093 (i) if the item of income, gain, loss, deduction, or credit is required to be taken into
 1094 account separately for federal income tax purposes, the nonresident pass-through entity
 1095 taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:

1096 (A) for federal income tax purposes;
 1097 (B) determined under Section 1366 et seq., Internal Revenue Code; and
 1098 (C) derived from or connected with Utah sources; or

1099 (ii) if the item of income, gain, loss, deduction, or credit is not required to be taken into
 1100 account separately for federal income tax purposes, determined in accordance with the
 1101 nonresident pass-through entity taxpayer's pro rata share of the item of income, gain, loss,
 1102 deduction, or credit:

1103 (A) relating to the pass-through entity generally;
 1104 (B) for federal income tax purposes;
 1105 (C) under Section 1366 et seq., Internal Revenue Code; and
 1106 (D) derived from or connected with Utah sources.

1107 ~~[(3)]~~ (2) In determining the source of a nonresident pass-through entity taxpayer's
 1108 income, the following provisions in a pass-through entity agreement may not be considered:

1109 ~~[(a) a provision that characterizes a payment to the taxpayer as being for:]~~

1110 ~~[(i) a service; or]~~

1111 ~~[(ii) the use of capital;]~~

1112 ~~[(b) except as provided in Subsection (5).]~~

1113 (a) a provision that allocates to the nonresident pass-through entity taxpayer, as income
 1114 ~~[or]~~, gain, or credit from a source outside this state, a greater proportion of the nonresident
 1115 pass-through entity taxpayer's ~~[distributive]~~ share of income ~~[or]~~, gain, or credit of the
 1116 pass-through entity than the ratio of income ~~[or]~~, gain, or credit of the pass-through entity from
 1117 sources outside this state to income ~~[or]~~, gain, or credit of the pass-through entity from all
 1118 sources; or

1119 ~~[(c) except as provided in Subsection (5);]~~

1120 (b) a provision that allocates to the nonresident pass-through entity taxpayer a greater
 1121 proportion of an item of loss or deduction of the pass-through entity derived from or connected
 1122 with Utah sources ~~[in this state]~~ than the taxpayer's ~~[proportionate]~~ share of loss or deduction
 1123 generally:

1124 (i) relating to the pass-through entity; and

1125 (ii) for federal income tax purposes.

1126 ~~[(4) Any addition or subtraction described in Section 59-10-114 that relates to an item~~
 1127 ~~of income, gain, loss, or deduction of a pass-through entity shall be made in accordance with~~
 1128 ~~the taxpayer's distributive share:]~~

1129 ~~[(a) of the portion of the item of income, gain, loss, or deduction required to be added~~
 1130 ~~or subtracted under Section 59-10-114 that is derived from or connected with sources in the~~
 1131 ~~state; and]~~

1132 ~~[(b) for federal income tax purposes.]~~

1133 ~~[(5) (a) Subject to Subsection (5)(b), the]~~

1134 (3) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah
 1135 Administrative Rulemaking Act, [authorize the use of one or more methods, other than a
 1136 method described in Subsections (1) through (4), for determining: (i) a nonresident taxpayer's
 1137 portion of an] authorize the use of a calculation other than the calculation provided in
 1138 Subsection (1), for determining a nonresident pass-through entity taxpayer's share of an
 1139 addition, subtraction, or adjustment that relates to an item of income, gain, loss, ~~[or]~~ deduction,
 1140 or credit of a pass-through entity derived from or connected with ~~[sources in the state; and]~~
 1141 Utah sources if:

1142 ~~[(ii) the portion of an item of income, gain, loss, or deduction required to be added or~~
 1143 ~~subtracted under Section 59-10-114 that is derived from or connected with sources in the state.]~~

1144 ~~[(b) For purposes of Subsection (5)(a), the commission may authorize the use of one or~~
1145 ~~more methods, other than a method described in Subsections (1) through (4), if:]~~

1146 ~~[(i) the commission finds that the use of the method is appropriate and equitable; and]~~

1147 ~~[(ii) the taxpayer applies to the commission.]~~

1148 ~~[(6)(a) A nonresident taxpayer's distributive share of an item of income, gain, loss, or~~
1149 ~~deduction shall be determined in accordance with the principles of Subsections 59-10-1404(3)~~
1150 ~~and (4).]~~

1151 ~~[(b) The character of an item of income, gain, loss, or deduction for a nonresident~~
1152 ~~taxpayer shall be determined in accordance with the principles of Subsections 59-10-1404(1)~~
1153 ~~and (2).]~~

1154 (a) the nonresident pass-through entity taxpayer applies to the commission; and

1155 (b) the commission finds that the use of the calculation is appropriate and equitable.

1156 **Section 17. Repealer.**

1157 This bill repeals:

1158 **Section 48-2c-117, Taxation of limited liability companies.**

1159 **Section 59-7-701, Taxation of S corporations.**

1160 **Section 59-7-702, Taxation of shareholders.**

1161 **Section 59-7-703, Payment or withholding of tax on behalf of nonresident**
1162 **shareholders -- Rate.**

1163 **Section 59-7-704, Amount taxable.**

1164 **Section 59-7-705, Application of minimum tax.**

1165 **Section 59-7-706, Distribution of revenues received.**

1166 **Section 59-7-707, Commission empowered to make rules.**

1167 **Section 18. Effective date -- Retrospective operation.**

1168 This bill:

1169 (1) if approved by two-thirds of all the members elected to each house, takes effect
1170 upon approval by the governor, or the day following the constitutional time limit of Utah
1171 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
1172 the date of veto override; and

1173 (2) has retrospective operation for a taxable year beginning on or after January 1, 2009.

Legislative Review Note
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Office of Legislative Research and General Counsel