

TAX REVISIONS

2011 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 9 non-legislators

Legislative Vote: 3 voting for 0 voting against 3 absent

General Description:

This bill amends the Property Tax Act, the Individual Income Tax Act, and related provisions to address procedures related to the property tax residential exemption, the determination of domicile for individual income tax purposes, and the taxation of a pass-through entity.

Highlighted Provisions:

This bill:

- ▶ requires a property owner to provide certain notice to the county board of equalization and make a declaration on the property owner's individual income tax return if the property owner is no longer eligible to receive a property tax residential exemption for the property owner's primary residence;
- ▶ allows the State Tax Commission to provide information to a county on a property owner's declaration on an individual income tax return that the property owner is no longer eligible to receive a property tax residential exemption for the property owner's primary residence;



- 28 ▶ addresses the determination of domicile for purposes of Title 59, Chapter 10,
- 29 Individual Income Tax Act;
- 30 ▶ modifies the definition of "pass-through entity"; and
- 31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill takes effect for a taxable year beginning on or after January 1, 2012.

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **59-1-403**, as last amended by Laws of Utah 2010, Chapters 6 and 67
- 39 **59-2-103.5**, as last amended by Laws of Utah 2008, Chapter 382
- 40 **59-10-103.1**, as enacted by Laws of Utah 2000, Chapter 84
- 41 **59-10-1402**, as last amended by Laws of Utah 2009, Chapter 312

42 ENACTS:

43 **59-10-136**, Utah Code Annotated 1953



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

46 Section 1. Section **59-1-403** is amended to read:

47 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

48 (1) (a) Any of the following may not divulge or make known in any manner any
49 information gained by that person from any return filed with the commission:

- 50 (i) a tax commissioner;
- 51 (ii) an agent, clerk, or other officer or employee of the commission; or
- 52 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
53 town.

54 (b) An official charged with the custody of a return filed with the commission is not
55 required to produce the return or evidence of anything contained in the return in any action or
56 proceeding in any court, except:

- 57 (i) in accordance with judicial order;
- 58 (ii) on behalf of the commission in any action or proceeding under:

- 59 (A) this title; or
- 60 (B) other law under which persons are required to file returns with the commission;
- 61 (iii) on behalf of the commission in any action or proceeding to which the commission
- 62 is a party; or
- 63 (iv) on behalf of any party to any action or proceeding under this title if the report or
- 64 facts shown by the return are directly involved in the action or proceeding.
- 65 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
- 66 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
- 67 pertinent to the action or proceeding.
- 68 (2) This section does not prohibit:
- 69 (a) a person or that person's duly authorized representative from receiving a copy of
- 70 any return or report filed in connection with that person's own tax;
- 71 (b) the publication of statistics as long as the statistics are classified to prevent the
- 72 identification of particular reports or returns; and
- 73 (c) the inspection by the attorney general or other legal representative of the state of the
- 74 report or return of any taxpayer:
- 75 (i) who brings action to set aside or review a tax based on the report or return;
- 76 (ii) against whom an action or proceeding is contemplated or has been instituted under
- 77 this title; or
- 78 (iii) against whom the state has an unsatisfied money judgment.
- 79 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
- 80 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
- 81 Rulemaking Act, provide for a reciprocal exchange of information with:
- 82 (i) the United States Internal Revenue Service; or
- 83 (ii) the revenue service of any other state.
- 84 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
- 85 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,
- 86 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and
- 87 other written statements with the federal government, any other state, any of the political
- 88 subdivisions of another state, or any political subdivision of this state, except as limited by
- 89 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal

90 government grant substantially similar privileges to this state.

91 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
92 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,
93 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
94 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
95 due.

96 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
97 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
98 requested by the executive secretary, any records, returns, or other information filed with the
99 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
100 regarding the environmental assurance program participation fee.

101 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
102 provide that person sales and purchase volume data reported to the commission on a report,
103 return, or other information filed with the commission under:

- 104 (i) Chapter 13, Part 2, Motor Fuel; or
- 105 (ii) Chapter 13, Part 4, Aviation Fuel.

106 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
107 as defined in Section 59-22-202, the commission shall report to the manufacturer:

108 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
109 manufacturer and reported to the commission for the previous calendar year under Section
110 59-14-407; and

111 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
112 manufacturer for which a tax refund was granted during the previous calendar year under
113 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

114 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
115 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
116 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

117 (h) Notwithstanding Subsection (1), the commission may:

118 (i) provide to the Division of Consumer Protection within the Department of
119 Commerce and the attorney general data:

120 (A) reported to the commission under Section 59-14-212; or

121 (B) related to a violation under Section 59-14-211; and

122 (ii) upon request, provide to any person data reported to the commission under
123 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

124 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
125 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
126 and Budget, provide to the committee or office the total amount of revenues collected by the
127 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period
128 specified by the committee or office.

129 (j) Notwithstanding Subsection (1), the commission shall make the directory required
130 by Section 59-14-603 available for public inspection.

131 (k) Notwithstanding Subsection (1), the commission may share information with
132 federal, state, or local agencies as provided in Subsection 59-14-606(3).

133 (l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of
134 Recovery Services within the Department of Human Services any relevant information
135 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer
136 who has become obligated to the Office of Recovery Services.

137 (ii) The information described in Subsection (3)(l)(i) may be provided by the Office of
138 Recovery Services to any other state's child support collection agency involved in enforcing
139 that support obligation.

140 (m) (i) Notwithstanding Subsection (1), upon request from the state court
141 administrator, the commission shall provide to the state court administrator, the name, address,
142 telephone number, county of residence, and Social Security number on resident returns filed
143 under Chapter 10, Individual Income Tax Act.

144 (ii) The state court administrator may use the information described in Subsection
145 (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

146 (n) Notwithstanding Subsection (1), the commission shall at the request of a
147 committee, commission, or task force of the Legislature provide to the committee, commission,
148 or task force of the Legislature any information relating to a tax imposed under Chapter 9,
149 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

150 (o) (i) As used in this Subsection (3)(o), "office" means the:

151 (A) Office of the Legislative Fiscal Analyst; or

152 (B) Office of Legislative Research and General Counsel.
153 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii),
154 the commission shall at the request of an office provide to the office all information:
155 (A) gained by the commission; and
156 (B) required to be attached to or included in returns filed with the commission.
157 (iii) (A) An office may not request and the commission may not provide to an office a
158 person's:
159 (I) address;
160 (II) name;
161 (III) Social Security number; or
162 (IV) taxpayer identification number.
163 (B) The commission shall in all instances protect the privacy of a person as required by
164 Subsection (3)(o)(iii)(A).
165 (iv) An office may provide information received from the commission in accordance
166 with this Subsection (3)(o) only:
167 (A) as:
168 (I) a fiscal estimate;
169 (II) fiscal note information; or
170 (III) statistical information; and
171 (B) if the information is classified to prevent the identification of a particular return.
172 (v) (A) A person may not request information from an office under Title 63G, Chapter
173 2, Government Records Access and Management Act, or this section, if that office received the
174 information from the commission in accordance with this Subsection (3)(o).
175 (B) An office may not provide to a person that requests information in accordance with
176 Subsection (3)(o)(v)(A) any information other than the information the office provides in
177 accordance with Subsection (3)(o)(iv).
178 (p) Notwithstanding Subsection (1), the commission may provide to the governing
179 board of the agreement or a taxing official of another state, the District of Columbia, the United
180 States, or a territory of the United States:
181 (i) the following relating to an agreement sales and use tax:
182 (A) information contained in a return filed with the commission;

- 183 (B) information contained in a report filed with the commission;
- 184 (C) a schedule related to Subsection (3)(p)(i)(A) or (B); or
- 185 (D) a document filed with the commission; or
- 186 (ii) a report of an audit or investigation made with respect to an agreement sales and
187 use tax.
- 188 (q) Notwithstanding Subsection (1), the commission may provide information
189 concerning a taxpayer's state income tax return or state income tax withholding information to
190 the Driver License Division if the Driver License Division:
- 191 (i) requests the information; and
- 192 (ii) provides the commission with a signed release form from the taxpayer allowing the
193 Driver License Division access to the information.
- 194 (r) Notwithstanding Subsection (1), the commission shall provide to the Utah [State]
195 911 Committee the information requested by the Utah [State] 911 Committee under Subsection
196 53-10-602(3).
- 197 (s) Notwithstanding Subsection (1), the commission may provide to the Utah
198 Educational Savings Plan information related to a resident or nonresident individual's
199 contribution to a Utah Educational Savings Plan account as designated on the resident or
200 nonresident's individual income tax return under Section 59-10-1313.
- 201 (t) Notwithstanding Subsection (1), the commission shall provide an eligibility worker
202 with the Children's Health Insurance Program with the adjusted gross income of an individual
203 if:
- 204 (i) an eligibility worker with the Children's Health Insurance Program requests the
205 information from the [~~Utah State Tax Commission~~] commission; and
- 206 (ii) the eligibility worker has complied with the identity verification and consent
207 provisions of Section 26-40-105.
- 208 (u) Notwithstanding Subsection (1), the commission may provide to a county, as
209 determined by the commission, information declared on an individual income tax return in
210 accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption
211 authorized under Section 59-2-103.
- 212 (4) (a) Reports and returns shall be preserved for at least three years.
- 213 (b) After the three-year period provided in Subsection (4)(a) the commission may

214 destroy a report or return.

215 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

216 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
217 the person shall be dismissed from office and be disqualified from holding public office in this
218 state for a period of five years thereafter.

219 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in
220 accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with
221 Subsection (3)(o)(v):

222 (i) is not guilty of a class A misdemeanor; and

223 (ii) is not subject to:

224 (A) dismissal from office in accordance with Subsection (5)(b); or

225 (B) disqualification from holding public office in accordance with Subsection (5)(b).

226 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.
227 Section 2. Section **59-2-103.5** is amended to read:

228 **59-2-103.5. Procedures to obtain an exemption for residential property --**
229 **Procedure if property owner or property no longer qualifies to receive a residential**
230 **exemption.**

231 (1) Subject to the other provisions of this section, a county legislative body may by
232 ordinance require that in order for residential property to be allowed a residential exemption in
233 accordance with Section 59-2-103, an owner of the residential property shall file with the
234 county board of equalization a statement:

235 (a) on a form prescribed by the commission by rule;

236 (b) signed by all of the owners of the residential property;

237 (c) certifying that the residential property is residential property; and

238 (d) containing other information as required by the commission by rule.

239 (2) (a) Subject to Section 59-2-103 and except as provided in Subsection (3), a county
240 board of equalization shall allow an owner described in Subsection (1) a residential exemption
241 for the residential property described in Subsection (1) if:

242 (i) the county legislative body enacts the ordinance described in Subsection (1); and

243 (ii) the county board of equalization determines that the requirements of Subsection (1)
244 are met.

245 (b) A county board of equalization may require an owner of the residential property
246 described in Subsection (1) to file the statement described in Subsection (1) only if:

247 (i) that residential property was ineligible for the residential exemption authorized
248 under Section 59-2-103 during the calendar year immediately preceding the calendar year for
249 which the owner is seeking to claim the residential exemption for that residential property;

250 (ii) an ownership interest in that residential property changes; or

251 (iii) the county board of equalization determines that there is reason to believe that that
252 residential property no longer qualifies for the residential exemption in accordance with
253 Section 59-2-103.

254 (3) Notwithstanding Subsection (2)(a), if a county legislative body does not enact an
255 ordinance requiring an owner to file a statement in accordance with this section, the county
256 board of equalization:

257 (a) may not require an owner to file a statement for residential property to be eligible
258 for a residential exemption in accordance with Section 59-2-103; and

259 (b) shall allow a residential exemption for residential property in accordance with
260 Section 59-2-103.

261 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
262 the commission shall make rules providing:

263 (i) the form for the statement described in Subsection (1); and

264 (ii) the contents of the form for the statement described in Subsection (1).

265 (b) The commission shall make the form described in Subsection (4)(a) available to
266 counties.

267 (5) Except as provided in Subsection (6), if a property owner no longer qualifies to
268 receive a residential exemption authorized under Section 59-2-103 for that property owner's
269 primary residence, the property owner shall:

270 (a) file a written statement with the county board of equalization of the county in which
271 the property is located:

272 (i) on a form provided by the county board of equalization; and

273 (ii) notifying the county board of equalization that the property owner no longer

274 qualifies to receive a residential exemption authorized under Section 59-2-103 for that property
275 owner's primary residence; and

276 (b) declare on the property owner's individual income tax return under Chapter 10,
277 Individual Income Tax Act, for the taxable year for which the property owner no longer
278 qualifies to receive a residential exemption authorized under Section 59-2-103 for that property
279 owner's primary residence, that the property owner no longer qualifies to receive a residential
280 exemption authorized under Section 59-2-103 for that property owner's primary residence.

281 (6) A property owner is not required to file a written statement or make the declaration
282 described in Subsection (5) if the property owner:

283 (a) changes primary residences;

284 (b) qualified to receive a residential exemption authorized under Section 59-2-103 for
285 the residence that was the property owner's former primary residence; and

286 (c) qualifies to receive a residential exemption authorized under Section 59-2-103 for
287 the residence that is the property owner's current primary residence.

288 Section 3. Section **59-10-103.1** is amended to read:

289 **59-10-103.1. Information to be contained on individual income tax returns or**
290 **booklets.**

291 (1) The commission shall print the phrase "all state income tax dollars fund education"
292 on:

293 [(+)] (a) the first page of [the] an individual income tax return; and

294 [(2)] (b) the cover page of [the] an individual income tax forms and instructions
295 booklet.

296 (2) The commission shall include on an individual income tax return a statement for a
297 property owner to declare that the property owner no longer qualifies to receive a residential
298 exemption authorized under Section 59-2-103 for that property owner's primary residence.

299 Section 4. Section **59-10-136** is enacted to read:

300 **59-10-136. Domicile -- Temporary absence from state.**

301 (1) An individual is considered to have domicile in this state if:

302 (a) a dependent with respect to whom the individual or the individual's spouse claims a
303 personal exemption on the individual's or individual's spouse's federal individual income tax
304 return is enrolled in a public kindergarten, public elementary school, or public secondary
305 school in this state; or

306 (b) the individual or the individual's spouse is a resident student in accordance with

307 Section 53B-8-102 who is enrolled in an institution of higher education described in Section
308 53B-2-101 in this state.

309 (2) There is a rebuttable presumption that an individual is considered to have domicile
310 in this state if:

311 (a) the individual or the individual's spouse claims a residential exemption in
312 accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's
313 primary residence;

314 (b) the individual or the individual's spouse is registered to vote in this state in
315 accordance with Title 20A, Chapter 2, Voter Registration; or

316 (c) the individual or the individual's spouse asserts residency in this state for purposes
317 of filing an individual income tax return under this chapter, including asserting that the
318 individual or the individual's spouse is a part-year resident of this state for the portion of the
319 taxable year for which the individual or the individual's spouse is a resident of this state.

320 (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not
321 met for an individual to be considered to have domicile in this state, the individual is
322 considered to have domicile in this state if:

323 (i) the individual or the individual's spouse has a permanent home in this state to which
324 the individual or the individual's spouse intends to return after being absent; and

325 (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the
326 individual's spouse's habitation in this state, not for a special or temporary purpose, but with the
327 intent of making a permanent home.

328 (b) The determination of whether an individual is considered to have domicile in this
329 state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into
330 consideration the totality of the following facts and circumstances:

331 (i) whether the individual or the individual's spouse has a driver license in this state;

332 (ii) whether a dependent with respect to whom the individual or the individual's spouse
333 claims a personal exemption on the individual's or individual's spouse's federal individual
334 income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled
335 in an institution of higher education described in Section 53B-2-101 in this state;

336 (iii) the nature and quality of the living accommodations that the individual or the
337 individual's spouse has in this state as compared to another state;

338 (iv) the presence in this state of a spouse or dependent with respect to whom the
339 individual or the individual's spouse claims a personal exemption on the individual's or
340 individual's spouse's federal individual income tax return;

341 (v) the physical location in which earned income as defined in Section 32(c)(2),
342 Internal Revenue Code, is earned by the individual or the individual's spouse;

343 (vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or
344 leased by the individual or the individual's spouse;

345 (vii) whether the individual or the individual's spouse is a member of a church, a club,
346 or another similar organization in this state;

347 (viii) whether the individual or the individual's spouse lists an address in this state on
348 mail, a telephone listing, a listing in an official government publication, other correspondence,
349 or another similar item;

350 (ix) whether the individual or the individual's spouse lists an address in this state on a
351 state or federal tax return;

352 (x) whether the individual or the individual's spouse asserts residency in this state on a
353 document, other than an individual income tax return filed under this chapter, filed with or
354 provided to a court or other governmental entity; or

355 (xi) the failure of an individual or the individual's spouse to obtain a permit or license
356 normally required of a resident of the state for which the individual or the individual's spouse
357 asserts to have domicile.

358 (4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions
359 of this Subsection (4), an individual is not considered to have domicile in this state if the
360 individual meets the following qualifications:

361 (i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's
362 spouse are absent from the state for at least 730 consecutive days; and

363 (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor
364 the individual's spouse:

365 (A) return to this state for more than 30 days in a calendar year;

366 (B) claim a personal exemption on the individual's or individual's spouse's federal
367 individual income tax return with respect to a dependent who is enrolled in a public
368 kindergarten, public elementary school, or public secondary school in this state;

369 (C) are resident students in accordance with Section 53B-8-102 who are enrolled in an
370 institution of higher education described in Section 53B-2-101 in this state;

371 (D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for
372 that individual's or individual's spouse's primary residence; or

373 (E) assert that this state is the individual's or the individual's spouse's tax home for
374 federal individual income tax purposes.

375 (b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of
376 Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered
377 to have domicile in this state by filing an individual income tax return in this state as a resident
378 individual.

379 (c) For purposes of Subsection (4)(a), an absence from the state:

380 (i) begins on the later of the date:

381 (A) the individual leaves this state; or

382 (B) the individual's spouse leaves this state; and

383 (ii) ends on the date the individual or the individual's spouse returns to this state if the
384 individual or the individual's spouse remains in this state for more than 30 days in a calendar
385 year.

386 (d) An individual shall file an individual income tax return or amended individual
387 income tax return under this chapter and pay any applicable interest imposed under Section
388 59-1-402 if:

389 (i) the individual did not file an individual income tax return or amended individual
390 income tax return under this chapter based on the individual's belief that the individual has met
391 the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

392 (ii) the individual or the individual's spouse fails to meet a qualification of Subsection
393 (4)(a) to not be considered to have domicile in this state.

394 (e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual
395 income tax return or amended individual income tax return under Subsection (4)(d) shall pay
396 any applicable penalty imposed under Section 59-1-401.

397 (ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and
398 (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return
399 or amended individual income tax return under this chapter:

400 (A) files the individual income tax return or amended individual income tax return
401 within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be
402 considered to have domicile in this state; and

403 (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax
404 due on the return, any interest imposed under Section 59-1-402, and any applicable penalty
405 imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or
406 (5).

407 (5) (a) If an individual is considered to have domicile in this state in accordance with
408 this section, the individual's spouse is considered to have domicile in this state.

409 (b) For purposes of this section, an individual is not considered to have a spouse if:

410 (i) the individual is legally separated or divorced from the spouse; or

411 (ii) the individual and the individual's spouse claim married filing separately filing
412 status for purposes of filing a federal individual income tax return for the taxable year.

413 (c) For purposes of this section, an individual's filing status on a federal individual
414 income tax return or a return filed under this chapter may not be considered in determining
415 whether an individual has a spouse.

416 (6) For purposes of this section, whether or not an individual or the individual's spouse
417 claims a property tax residential exemption under Chapter 2, Property Tax Act, for the
418 residential property that is the primary residence of a tenant of the individual or the individual's
419 spouse may not be considered in determining domicile in this state.

420 Section 5. Section **59-10-1402** is amended to read:

421 **59-10-1402. Definitions.**

422 As used in this part:

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

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

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

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

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

430 (i) an addition to or subtraction from adjusted gross income described in Section

- 431 59-10-114; or
- 432 (ii) an adjustment to adjusted gross income described in Section 59-10-115; or
- 433 (c) for a pass-through entity taxpayer that is classified as an estate or a trust for federal
- 434 income tax purposes:
- 435 (i) an addition to or subtraction from unadjusted income described in Section
- 436 59-10-202; or
- 437 (ii) an adjustment to unadjusted income described in Section 59-10-209.1.
- 438 (2) "Business income" means income arising from transactions and activity in the
- 439 regular course of a pass-through entity's trade or business and includes income from tangible
- 440 and intangible property if the acquisition, management, and disposition of the property
- 441 constitutes integral parts of the pass-through entity's regular trade or business operations.
- 442 (3) "C corporation" is as defined in Section 1361, Internal Revenue Code.
- 443 (4) "Commercial domicile" means the principal place from which the trade or business
- 444 of a business entity is directed or managed.
- 445 (5) "Derived from or connected with Utah sources" means:
- 446 (a) if a pass-through entity taxpayer is classified as a C corporation for federal income
- 447 tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part
- 448 3, Allocation and Apportionment of Income - Utah UDITPA Provisions; or
- 449 (b) if a pass-through entity or pass-through entity taxpayer is classified as an estate,
- 450 individual, partnership, S corporation, or a trust for federal income tax purposes, derived from
- 451 or connected with Utah sources in accordance with Sections 59-10-117 and 59-10-118.
- 452 (6) "Nonbusiness income" means all income of a pass-through entity other than
- 453 business income.
- 454 (7) "Nonresident business entity" means a business entity that does not have its
- 455 commercial domicile in this state.
- 456 (8) "Nonresident pass-through entity taxpayer" means a pass-through entity taxpayer
- 457 that is a:
- 458 (a) nonresident individual; or
- 459 (b) nonresident business entity.
- 460 (9) [~~a~~] "Pass-through entity" means a business entity that is:
- 461 [~~i~~] (a) the following if classified as a partnership for federal income tax purposes:

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

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

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

465 ~~[(D)]~~ (iv) a limited partnership;

466 ~~[(E)]~~ (b) an S corporation; ~~[or]~~

467 (c) an estate or trust with respect to which the estate's or trust's income, gain, loss,

468 deduction, or credit is divided among and passed through to one or more pass-through entity

469 taxpayers; or

470 ~~[(iii)]~~ (d) a business entity similar to ~~[Subsection]~~ Subsections (9)(a)(i) or (ii) through

471 (c):

472 ~~[(A)]~~ (i) with respect to which the business entity's income, gain, loss, deduction, or

473 credit is divided among and passed through to one or more pass-through entity taxpayers; and

474 ~~[(B)]~~ (ii) as defined by the commission by rule made in accordance with Title 63G,

475 Chapter 3, Utah Administrative Rulemaking Act.

476 ~~[(b) "Pass-through entity" does not include an estate or trust that is classified as an~~

477 ~~estate or trust for federal income tax purposes.]~~

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

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

480 (a) that is:

481 (i) for a general partnership, a partner;

482 (ii) for a limited liability company, a member;

483 (iii) for a limited liability partnership, a partner;

484 (iv) for a limited partnership, a partner;

485 (v) for an S corporation, a shareholder; ~~[or]~~

486 (vi) for an estate or trust, a beneficiary; or

487 ~~[(vi)]~~ (vii) for a business entity described in Subsection (9)~~(a)(iii)]~~(d), a member,

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

489 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

491 passed through.

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

493 business entity.

494 (12) "Resident pass-through entity taxpayer" means a pass-through entity taxpayer that
495 is a:

496 (a) resident individual; or

497 (b) resident business entity.

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

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

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

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

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

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

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

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

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

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

514 (b) for an S corporation:

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

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

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

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

522 Section 6. **Effective date.**

523 This bill takes effect for a taxable year beginning on or after January 1, 2012.

Legislative Review Note
as of 11-22-10 10:00 AM

Office of Legislative Research and General Counsel