

1                                   **INCOME TAX - PASS-THROUGH ENTITIES**

2   2012 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Wayne L. Niederhauser**

5                                   House Sponsor: Patrick Painter

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7 **LONG TITLE**

8 **General Description:**

9           This bill amends the Individual Income Tax Act to address provisions related to a  
10 pass-through entity.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ defines terms;
- 14           ▶ provides that a pass-through entity includes certain estates and trusts;
- 15           ▶ provides that a pass-through entity taxpayer includes certain beneficiaries of an  
16 estate or trust;
- 17           ▶ addresses pass-through entity withholding exemptions;
- 18           ▶ provides that certain penalties and interest may not be imposed if a pass-through  
19 entity that is a trust fails to pay or withhold an amount with respect to a dependent  
20 beneficiary;
- 21           ▶ establishes a rebuttable presumption for purposes of an audit; and
- 22           ▶ makes technical and conforming changes.

23 **Money Appropriated in this Bill:**

24           None

25 **Other Special Clauses:**

26           This bill takes effect for a taxable year beginning on or after January 1, 2013.

27 **Utah Code Sections Affected:**

28 AMENDS:

29           **59-10-1402**, as last amended by Laws of Utah 2009, Chapter 312

30           **59-10-1403.2**, as enacted by Laws of Utah 2009, Chapter 312



31  
32 *Be it enacted by the Legislature of the state of Utah:*

33           Section 1. Section **59-10-1402** is amended to read:

34           **59-10-1402. Definitions.**

35           As used in this part:

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

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

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

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

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

43           (i) an addition to or subtraction from adjusted gross income described in Section  
44 59-10-114; or

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

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

48           (i) an addition to or subtraction from unadjusted income described in Section  
49 59-10-202; or

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

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

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

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

58 (5) "Dependent beneficiary" means an individual who:

59 (a) is claimed as a dependent under Section 151, Internal Revenue Code, on another  
60 person's federal income tax return; and

61 (b) is a beneficiary of a trust that is a pass-through entity.

62 [~~5~~] (6) "Derived from or connected with Utah sources" means:

63 (a) if a pass-through entity taxpayer is classified as a C corporation for federal income  
64 tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part  
65 3, Allocation and Apportionment of Income - Utah UDITPA Provisions; or

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

69 [~~6~~] (7) "Nonbusiness income" means all income of a pass-through entity other than  
70 business income.

71 [~~7~~] (8) "Nonresident business entity" means a business entity that does not have its  
72 commercial domicile in this state.

73 [~~8~~] (9) "Nonresident pass-through entity taxpayer" means a pass-through entity  
74 taxpayer that is a:

75 (a) nonresident individual; or

76 (b) nonresident business entity.

77 [~~9~~-(a)] (10) "Pass-through entity" means a business entity that is:

78 [~~i~~] (a) the following if classified as a partnership for federal income tax purposes:

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

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

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

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

83 [~~ii~~] (b) an S corporation; [or]

84 (c) an estate or trust with respect to which the estate's or trust's income, gain, loss,  
85 deduction, or credit is divided among and passed through to one or more pass-through entity

86 taxpayers; or

87 [~~(iii)~~] (d) a business entity similar to [~~Subsection (9)(a)(i) or (ii)~~] Subsections (10)(a)  
88 through (c):

89 [~~(A)~~] (i) with respect to which the business entity's income, gain, loss, deduction, or  
90 credit is divided among and passed through to one or more pass-through entity taxpayers; and

91 [~~(B)~~] (ii) as defined by the commission by rule made in accordance with Title 63G,  
92 Chapter 3, Utah Administrative Rulemaking Act.

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

95 [~~(10)~~] (11) "Pass-through entity taxpayer" means a resident or nonresident individual, a  
96 resident or nonresident business entity, or a resident or nonresident estate or trust:

97 (a) that is:

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

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

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

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

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

103 (vi) for an estate or trust described in Subsection (10)(c), a beneficiary; or

104 [~~(vi)~~] (vii) for a business entity described in Subsection [~~(9)(a)(iii)~~] (10)(d), a member,  
105 partner, shareholder, or other title designated by the commission by rule made in accordance  
106 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

109 [~~(11)~~] (12) "Resident business entity" means a business entity that is not a nonresident  
110 business entity.

111 [~~(12)~~] (13) "Resident pass-through entity taxpayer" means a pass-through entity  
112 taxpayer that is a:

113 (a) resident individual; or

114 (b) resident business entity.

115 [~~(13)~~] (14) "Return" means a return that a pass-through entity taxpayer files:

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

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

120 [~~(14)~~] (15) "S corporation" is as defined in Section 1361, Internal Revenue Code.

121 [~~(15)~~] (16) "Share of income, gain, loss, deduction, or credit of a pass-through entity"  
122 means:

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

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

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

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

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

132 (b) for an S corporation:

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

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

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

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

140 (17) "Statement of dependent beneficiary income" means a statement:

141 (a) signed by the person who claims a dependent beneficiary as a dependent under

142 Section 151, Internal Revenue Code, on the person's federal income tax return for the taxable  
143 year;

144 (b) attesting that the dependent is a dependent beneficiary; and

145 (c) indicating that the person expects that the dependent beneficiary's adjusted gross  
146 income for the taxable year will not exceed the basic standard deduction for the dependent  
147 beneficiary, as calculated under Section 63, Internal Revenue Code, for that taxable year.

148 Section 2. Section **59-10-1403.2** is amended to read:

149 **59-10-1403.2. Pass-through entity payment or withholding of tax on behalf of a**  
150 **pass-through entity taxpayer -- Exceptions to payment or withholding requirement --**  
151 **Procedures and requirements -- Failure to pay or withhold a tax on behalf of a**  
152 **pass-through entity taxpayer.**

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

155 (i) on:

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

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

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

160 (b) A pass-through entity is not required to pay or withhold a tax under Subsection  
161 (1)(a):

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

163 (ii) if the pass-through entity is an organization exempt from taxation under Subsection  
164 59-7-102(1)(a); ~~or~~

165 (iii) if the pass-through entity:

166 (A) is a plan under Section 401, 408, or 457, Internal Revenue Code; and

167 (B) is not required to file a return under Chapter 7, Corporate Franchise and Income  
168 Taxes, or this chapter; or

169 ~~[(iii)]~~ (iv) if the pass-through entity is a publicly traded partnership:

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

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

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

173 partner of the publicly traded partnership with income derived from or connected with Utah

174 sources that exceeds \$500 in a taxable year:

175 (I) the partner's name;

176 (II) the partner's address;

177 (III) the partner's taxpayer identification number; and

178 (IV) other information required by the commission.

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

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

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

182 3, Utah Administrative Rulemaking Act; and

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

184 pass-through entity taxpayer under this chapter with respect to the income described in

185 Subsection (1)(a)(i) of that pass-through entity for the taxable year.

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

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

188 (A) shall:

189 (I) for a pass-through entity except for a pass-through entity that is an S corporation,

190 take into account items of income, gain, loss, deduction, and credit as analyzed on the schedule

191 for reporting partners' distributive share items as part of the federal income tax return for the

192 pass-through entity; or

193 (II) for a pass-through entity that is an S corporation, take into account items of

194 income, gain, loss, deduction, and credit as reconciled on the schedule for reporting

195 shareholders' pro rata share items as part of the federal income tax return for the pass-through

196 entity; and

197 (B) notwithstanding Subsection (2)(b)(ii)(D), take into account the refundable tax

198 credit provided in Section 59-6-102; and

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

202 (A) a capital loss;

203 (B) a passive loss;

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

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

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

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

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

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

214 (II) this chapter.

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

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

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

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

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

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

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

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

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

240 (b) the pass-through entity taxpayer:

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

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

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

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

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

250 (6) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not collect an  
251 amount under this section for a taxable year from a pass-through entity that is a trust and shall  
252 waive any penalty and interest on that amount if:

253 (a) the pass-through entity fails to pay or withhold the tax on the amount as required by

254 this section on behalf of a dependent beneficiary;

255 (b) the pass-through entity applies to the commission; and

256 (c) (i) the dependent beneficiary complies with the requirements of Subsection (5)(b);

257 or

258 (ii) (A) the dependent beneficiary's adjusted gross income for the taxable year does not  
259 exceed the basic standard deduction for the dependent beneficiary, as calculated under Section  
260 63, Internal Revenue Code, for that taxable year; and

261 (B) the trustee of the trust retains a statement of dependent beneficiary income on  
262 behalf of the dependent beneficiary.

263 (7) If a pass-through entity would have otherwise qualified for a waiver of a penalty  
264 and interest under Subsection (6), except that the trustee of a trust has not applied to the  
265 commission as required by Subsection (6)(b) or retained the statement of dependent beneficiary  
266 income required by Subsection (6)(c)(ii)(B), it is a rebuttable presumption in an audit that the  
267 pass-through entity would have otherwise qualified for the waiver of the penalty and interest  
268 under Subsection (6).

269 **Section 3. Effective date.**

270 This bill takes effect for a taxable year beginning on or after January 1, 2013.