

**TAX REVISIONS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel McCay**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses apportionment of business income to the state for purposes of income taxes.

**Highlighted Provisions:**

This bill:

- ▶ addresses the apportionment of business income to the state for purposes of income taxes by requiring all taxpayers, for certain taxable years, to use only the sales factor to calculate the fraction for apportioning business income to the state; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**59-7-302**, as last amended by Laws of Utah 2016, Chapters 311 and 368

**59-7-311**, as last amended by Laws of Utah 2016, Chapters 311 and 323

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

Section 1. Section **59-7-302** is amended to read:



28 **59-7-302. Definitions.**

29 (1) As used in this part, unless the context otherwise requires:

30 (a) "Aircraft type" means a particular model of aircraft as designated by the  
31 manufacturer of the aircraft.

32 (b) "Airline" means the same as that term is defined in Section 59-2-102.

33 (c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during  
34 the airline's tax period.35 (d) "Business income" means income arising from transactions and activity in the  
36 regular course of the taxpayer's trade or business and includes income from tangible and  
37 intangible property if the acquisition, management, and disposition of the property constitutes  
38 integral parts of the taxpayer's regular trade or business operations.39 (e) "Commercial domicile" means the principal place from which the trade or business  
40 of the taxpayer is directed or managed.41 (f) "Compensation" means wages, salaries, commissions, and any other form of  
42 remuneration paid to employees for personal services.43 (g) (i) Except as provided in Subsection (1)(g)(ii), "mobile flight equipment" [~~is as~~]  
44 means the same as that term is defined in Section 59-2-102.

45 (ii) "Mobile flight equipment" does not include:

46 (A) a spare engine; or

47 (B) tangible personal property described in Subsection 59-2-102(27) owned by an:

48 (I) air charter service; or

49 (II) air contract service.

50 (h) "Nonbusiness income" means all income other than business income.

51 (i) "Optional sales factor weighted taxpayer" means:

52 (i) for a taxpayer that is not a unitary group, regardless of the number of economic  
53 activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales  
54 everywhere generated by economic activities performed by the taxpayer if the economic  
55 activities are classified in a NAICS code within NAICS Subsector 334 of the 2002 or 2007  
56 North American Industry Classification System of the federal Executive Office of the  
57 President, Office of Management and Budget; or

58 (ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the

59 taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if  
60 the economic activities are classified in a NAICS code within NAICS Subsector 334 of the  
61 2002 or 2007 North American Industry Classification System of the federal Executive Office of  
62 the President, Office of Management and Budget.

63 (j) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

64 (k) "Sales" means all gross receipts of the taxpayer not allocated under Sections  
65 59-7-306 through 59-7-310.

66 (l) Subject to Subsection (2), "sales factor weighted taxpayer" means:

67 (i) for a taxpayer that is not a unitary group, regardless of the number of economic  
68 activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales  
69 everywhere generated by economic activities performed by the taxpayer if the economic  
70 activities are classified in a NAICS code of the 2002 or 2007 North American Industry  
71 Classification System of the federal Executive Office of the President, Office of Management  
72 and Budget, except for:

73 (A) a NAICS code within NAICS Sector 21, Mining;

74 (B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;

75 (C) a NAICS code within NAICS Sector 31-33, Manufacturing;

76 (D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;

77 (E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector  
78 519, Other Information Services; or

79 (F) a NAICS code within NAICS Sector 52, Finance and Insurance; or

80 (ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the  
81 taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if  
82 the economic activities are classified in a NAICS code of the 2002 or 2007 North American  
83 Industry Classification System of the federal Executive Office of the President, Office of  
84 Management and Budget, except for a NAICS code under Subsections (1)(l)(i)(A) through (F).

85 (m) "State" means any state of the United States, the District of Columbia, the  
86 Commonwealth of Puerto Rico, any territory or possession of the United States, and any  
87 foreign country or political subdivision thereof.

88 (n) "Transportation revenue" means revenue an airline earns from:

89 (i) transporting a passenger or cargo; or

90 (ii) from miscellaneous sales of merchandise as part of providing transportation  
91 services.

92 (o) "Utah revenue ton miles" means, for an airline, the total revenue ton miles within  
93 the borders of this state:

94 (i) during the airline's tax period; and

95 (ii) from flight stages that originate or terminate in this state.

96 (2) The following apply to Subsection (1)(l):

97 (a) (i) Subject to the other provisions of this Subsection (2) and except for a taxable  
98 year beginning on or after January 1, 2017, but ending on or before December 31, 2020, a  
99 taxpayer shall for each taxable year determine whether the taxpayer is a sales factor weighted  
100 taxpayer.

101 (ii) A taxpayer shall make the determination required by Subsection (2)(a)(i) before the  
102 due date for filing the taxpayer's return under this chapter for the taxable year, including  
103 extensions.

104 (iii) For purposes of making the determination required by Subsection (2)(a)(i), total  
105 sales everywhere include only the total sales everywhere:

106 (A) as determined in accordance with this part; and

107 (B) made during the taxable year for which a taxpayer makes the determination  
108 required by Subsection (2)(a)(i).

109 (b) A taxpayer that files a return as a unitary group for a taxable year is considered to  
110 be a unitary group for that taxable year.

111 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
112 commission may define the term "economic activity" consistent with the use of the term  
113 "activity" in the 2007 North American Industry Classification System of the federal Executive  
114 Office of the President, Office of Management and Budget.

115 Section 2. Section **59-7-311** is amended to read:

116 **59-7-311. Method of apportionment of business income.**

117 (1) For a taxable year, all business income shall be apportioned to this state by  
118 multiplying the business income by a fraction calculated as provided in this section.

119 (2) Subject to the other provisions of this part, a taxpayer, except for a sales factor  
120 weighted taxpayer and an optional sales factor weighted taxpayer, shall calculate the fraction

121 for apportioning business income to this state using one of the following fractions:

122 (a) a fraction where:

123 (i) the numerator of the fraction is the sum of:

124 (A) the property factor as calculated under Section 59-7-312;

125 (B) the payroll factor as calculated under Section 59-7-315; and

126 (C) the sales factor as calculated under Section 59-7-317; and

127 (ii) the denominator of the fraction is three; or

128 (b) a fraction where:

129 (i) the numerator of the fraction is the sum of:

130 (A) the property factor as calculated under Section 59-7-312;

131 (B) the payroll factor as calculated under Section 59-7-315; and

132 (C) the sales factor as calculated under Section 59-7-317 multiplied by two; and

133 (ii) the denominator of the fraction is four.

134 (3) Subject to the other provisions of this part, a sales factor weighted taxpayer shall

135 calculate the fraction for apportioning business income to this state using a fraction where:

136 (a) the numerator of the fraction is the sales factor as calculated under Section

137 59-7-317; and

138 (b) the denominator of the fraction is one.

139 (4) Subject to the other provisions of this part, an optional sales factor weighted

140 taxpayer shall calculate the fraction for apportioning business income to this state using a

141 method described in Subsection (2)(a), (2)(b), or (3).

142 (5) Notwithstanding Subsections (2) through (4) and subject to the other provisions of

143 this part, for a taxable year beginning on or after January 1, 2017, but ending on or before

144 December 31, 2020, all taxpayers shall calculate the fraction for apportioning business income

145 to this state using the method described in Subsection (3).

146 ~~[(5)]~~ (6) (a) The taxpayer shall determine the method for calculating the fraction for  
147 apportioning business income to this state under this section on or before the due date for filing  
148 the taxpayer's return under this chapter for the taxable year, including extensions.

149 (b) The method described in Subsection ~~[(5)]~~ (6)(a) is in effect for the taxable year.

150 ~~[(6)]~~ (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

151 Act, the commission may make rules providing procedures for a taxpayer to make the election

152 required by Subsections (2) and (4).

153           Section 3. **Retrospective operation.**

154           This bill has retrospective operation for a taxable year beginning on or after January 1,

155 2017.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**