

Representative Daniel McCay proposes the following substitute bill:

SALES FACTOR WEIGHTED TAX MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies the business income apportionment provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes how a taxpayer determines whether greater than 50% of the taxpayer's economic activities are classified within particular NAICS codes;
- ▶ requires that, for a taxable year beginning on or after January 1, 2018, a taxpayer that apportions business income using the single sales factor method continue to use the single sales factor method of apportionment;
- ▶ provides the circumstances where a taxpayer that previously apportioned business income using the single sales factor method may change the method of apportionment;
- ▶ provides rulemaking authority to the State Tax Commission; and
- ▶ requires the State Tax Commission to conduct a study related to the apportionment of business income.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 This bill provides a repeal date.

29 This bill provides a coordination clause.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **59-7-302**, as last amended by Laws of Utah 2016, Chapters 311 and 368

33 **59-7-311**, as last amended by Laws of Utah 2016, Chapters 311 and 323

34 **Utah Code Sections Affected by Coordination Clause:**

35 **59-7-302**, as last amended by Laws of Utah 2016, Chapters 311 and 368

36 **Uncodified Material Affected:**

37 ENACTS UNCODIFIED MATERIAL



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

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

41 **59-7-302. Definitions.**

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

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

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

46 (c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during
47 the airline's tax period.

48 (d) "Business income" means income arising from transactions and activity in the
49 regular course of the taxpayer's trade or business and includes income from tangible and
50 intangible property if the acquisition, management, and disposition of the property constitutes
51 integral parts of the taxpayer's regular trade or business operations.

52 (e) "Commercial domicile" means the principal place from which the trade or business
53 of the taxpayer is directed or managed.

54 (f) "Compensation" means wages, salaries, commissions, and any other form of
55 remuneration paid to employees for personal services.

56 (g) (i) "Excluded NAICS code" means a NAICS code of the 2002 or 2007 North

57 American Industry Classification System of the federal Executive Office of the President,
58 Office of Management and Budget, within:

- 59 (A) NAICS Sector 21, Mining;
- 60 (B) NAICS Industry Group 2212, Natural Gas Distribution;
- 61 (C) except as provided in Subsection (1)(g)(ii), NAICS Sector 31-33, Manufacturing;
- 62 (D) NAICS Sector 48-49, Transportation and Warehousing;
- 63 (E) except as provided in Subsection (1)(g)(ii), NAICS Sector 51, Information; or
- 64 (F) NAICS Sector 52, Finance and Insurance.

65 (ii) "Excluded NAICS code" does not include a NAICS code of the 2002 or 2007 North
66 American Industry Classification System of the federal Executive Office of the President,
67 Office of Management and Budget, within:

- 68 (A) NAICS Subsector 333, Machinery Manufacturing;
- 69 (B) NAICS Subsector 334, Computer and Electronic Product Manufacturing; or
- 70 (C) NAICS Subsector 519, Other Information Services.

71 (h) "Included NAICS code" means a NAICS code of the 2002 or 2007 North American
72 Industry Classification System of the federal Executive Office of the President, Office of
73 Management and Budget, that is not an excluded NAICS code.

74 ~~[(g)]~~ (i) (i) Except as provided in Subsection (1)~~[(g)]~~(i)(ii), "mobile flight equipment"
75 ~~[is as]~~ means the same as that term is defined in Section 59-2-102.

- 76 (ii) "Mobile flight equipment" does not include:
- 77 (A) a spare engine; or
- 78 (B) tangible personal property described in Subsection 59-2-102(27) owned by an~~[-(F)]~~
- 79 air charter service~~[-];~~ or ~~[(H)]~~ air contract service.

80 ~~[(h)]~~ (j) "Nonbusiness income" means all income other than business income.

81 ~~[(i) "Optional sales factor weighted taxpayer" means:]~~

82 ~~[(i) for a taxpayer that is not a unitary group, regardless of the number of economic~~
83 ~~activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales~~
84 ~~everywhere generated by economic activities performed by the taxpayer if the economic~~
85 ~~activities are classified in a NAICS code within NAICS Subsector 334 of the 2002 or 2007~~
86 ~~North American Industry Classification System of the federal Executive Office of the~~
87 ~~President, Office of Management and Budget; or]~~

88 ~~[(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the~~
89 ~~taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if~~
90 ~~the economic activities are classified in a NAICS code within NAICS Subsector 334 of the~~
91 ~~2002 or 2007 North American Industry Classification System of the federal Executive Office of~~
92 ~~the President, Office of Management and Budget.]~~

93 (k) (i) "Qualifying status change" means that an entity with business income:

94 (A) acquires another entity;

95 (B) is acquired by another entity; or

96 (C) merges with another entity.

97 (ii) "Qualifying status change" does not include any change in the structure, ownership,
98 or management of the entity with business income other than a change described in Subsection
99 (1)(k)(i).

100 ~~[(j)]~~ (l) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

101 ~~[(k)]~~ (m) "Sales" means all gross receipts of the taxpayer not allocated under Sections
102 59-7-306 through 59-7-310.

103 ~~[(t)]~~ (n) [Subject to Subsection (2), "sales] "Sales factor weighted taxpayer" means[:] a
104 taxpayer as determined by Subsection (2)(a).

105 ~~[(i) for a taxpayer that is not a unitary group, regardless of the number of economic~~
106 ~~activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales~~
107 ~~everywhere generated by economic activities performed by the taxpayer if the economic~~
108 ~~activities are classified in a NAICS code of the 2002 or 2007 North American Industry~~
109 ~~Classification System of the federal Executive Office of the President, Office of Management~~
110 ~~and Budget, except for:]~~

111 ~~[(A) a NAICS code within NAICS Sector 21, Mining;]~~

112 ~~[(B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;]~~

113 ~~[(C) a NAICS code within NAICS Sector 31-33, Manufacturing;]~~

114 ~~[(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;]~~

115 ~~[(E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector~~
116 ~~519, Other Information Services; or]~~

117 ~~[(F) a NAICS code within NAICS Sector 52, Finance and Insurance; or]~~

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

119 ~~taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if~~
 120 ~~the economic activities are classified in a NAICS code of the 2002 or 2007 North American~~
 121 ~~Industry Classification System of the federal Executive Office of the President, Office of~~
 122 ~~Management and Budget, except for a NAICS code under Subsections (1)(1)(i)(A) through (F).]~~

123 ~~[(m)]~~ (o) "State" means any state of the United States, the District of Columbia, the
 124 Commonwealth of Puerto Rico, any territory or possession of the United States, and any
 125 foreign country or political subdivision thereof.

126 ~~[(n)]~~ (p) "Transportation revenue" means revenue an airline earns from:

127 (i) transporting a passenger or cargo; or

128 (ii) from miscellaneous sales of merchandise as part of providing transportation
 129 services.

130 ~~[(o)]~~ (q) "Utah revenue ton miles" means, for an airline, the total revenue ton miles
 131 within the borders of this state:

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

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

134 ~~[(2) The following apply to Subsection (1)(1):]~~

135 (2) (a) (i) Subject to the other provisions of this Subsection (2), a taxpayer shall ~~[for~~
 136 ~~each taxable year]~~ determine for a taxable year whether the taxpayer is a sales factor weighted
 137 taxpayer if the taxpayer is not subject to Subsection 59-7-311(5).

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

141 (iii) For purposes of making the determination required by Subsection (2)(a)(i), ~~[total~~
 142 ~~sales everywhere include only the total sales everywhere:]~~ a taxpayer shall determine whether
 143 greater than 50% of the taxpayer's economic activities everywhere are classified in included
 144 NAICS codes as provided in Subsections (2)(a)(iv) through (vi).

145 ~~[(A) as determined in accordance with this part; and]~~

146 ~~[(B) made during the taxable year for which a taxpayer makes the determination~~
 147 ~~required by Subsection (2)(a)(i).]~~

148 (iv) A taxpayer shall calculate the following two fractions, taking into account the
 149 taxpayer's establishments and the taxpayer's economic activities everywhere, regardless of

150 whether the taxpayer eliminates intercompany sales or intercompany transactions for other
151 purposes on the taxpayer's income tax return:

152 (A) the fraction reached by making the calculation described in Section 59-7-312,
153 except that the numerator shall be the property everywhere that is attributable to economic
154 activities that are classified in included NAICS codes; and

155 (B) the fraction reached by making the calculation described in Section 59-7-315,
156 except that the numerator shall be the payroll everywhere that is attributable to economic
157 activities that are classified in included NAICS codes.

158 (v) The taxpayer shall calculate an average of the fractions calculated in accordance
159 with Subsection (2)(a)(iv) by:

160 (A) adding together the fractions calculated in accordance with Subsection (2)(a)(iv);
161 and

162 (B) dividing the sum calculated in Subsection (2)(a)(v)(A) by two.

163 (vi) If the average calculated in Subsection (2)(a)(v) is greater than .50, the taxpayer is
164 a sales factor weighted taxpayer.

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

167 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
168 commission may define the [term] terms:

169 (i) "economic activity" consistent with the use of the term "activity" in the 2007 North
170 American Industry Classification System of the federal Executive Office of the President,
171 Office of Management and Budget[-]; and

172 (ii) "establishment."

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

174 **59-7-311. Method of apportionment of business income.**

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

177 (2) Subject to the other provisions of this part, a taxpayer, except for a sales factor
178 weighted taxpayer and [~~an optional sales factor weighted taxpayer;~~] a taxpayer subject to
179 Subsection (4), shall calculate the fraction for apportioning business income to this state using
180 one of the following fractions:

- 181 (a) a fraction where:
- 182 (i) the numerator of the fraction is the sum of:
- 183 (A) the property factor as calculated under Section 59-7-312;
- 184 (B) the payroll factor as calculated under Section 59-7-315; and
- 185 (C) the sales factor as calculated under Section 59-7-317; and
- 186 (ii) the denominator of the fraction is three; or
- 187 (b) a fraction where:
- 188 (i) the numerator of the fraction is the sum of:
- 189 (A) the property factor as calculated under Section 59-7-312;
- 190 (B) the payroll factor as calculated under Section 59-7-315; and
- 191 (C) the sales factor as calculated under Section 59-7-317 multiplied by two; and
- 192 (ii) the denominator of the fraction is four.
- 193 (3) Subject to the other provisions of this part, a sales factor weighted taxpayer shall
- 194 calculate the fraction for apportioning business income to this state using a fraction where:

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

196 59-7-317; and

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

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

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

200 ~~method described in Subsection (2)(a), (2)(b), or (3).]~~

201 (4) For a taxable year beginning on or after January 1, 2018, a taxpayer that apportions

202 business income using the method described in Subsection (3) shall continue to apportion

203 business income using the method described in Subsection (3) in subsequent taxable years

204 except as provided in Subsection (5).

205 (5) (a) A taxpayer that is subject to Subsection (4) may make a new determination of

206 the taxpayer's method of apportionment for a taxable year in which a qualifying status change

207 occurs.

208 (b) Once a taxpayer described in Subsection (5)(a) apportions business income using

209 the method described in Subsection (3) after a qualifying status change, the provisions of

210 Subsection (4) apply.

211 [~~(5)] (6) (a) The taxpayer shall determine the method for calculating the fraction for~~

212 apportioning business income to this state under this section on or before the due date for filing
213 the taxpayer's return under this chapter for the taxable year, including extensions.

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

215 [~~(6)~~] (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
216 Act, the commission may make rules providing procedures for a taxpayer to make the election
217 required by Subsections (2) and (4).

218 Section 3. **Apportionment provisions study.**

219 (1) On or before September 30, 2017, the Utah State Tax Commission shall conduct a
220 study and make recommendations on the apportionment provisions of 2017 General Session
221 S.B. 229, Sales Factor Weighted Tax Modifications.

222 (2) The Utah State Tax Commission shall present the Utah State Tax Commission's
223 findings and recommendations to the Revenue and Taxation Interim Committee on or before
224 September 30, 2017.

225 Section 4. **Effective date.**

226 (1) Except as provided in Subsection (2), this bill takes effect for a taxable year
227 beginning on or after January 1, 2018.

228 (2) Uncodified Section 3, Apportionment provisions study, takes effect on May 9,
229 2017.

230 Section 5. **Repeal date.**

231 Uncodified Section 3, Apportionment provisions study, is repealed on September 30,
232 2017.

233 Section 6. **Coordinating S.B. 229 with S.B. 132 -- Substantive and technical**
234 **amendments.**

235 If this S.B. 229 and S.B. 132, Tax Provision Amendments, both pass and become law,
236 it is the intent of the Legislature that on January 1, 2018, the Office of Legislative Research and
237 General Counsel shall prepare the Utah Code database for publication by making the following
238 changes:

239 (1) modifying Subsection [59-7-302\(1\)\(g\)\(ii\)](#) to read:

240 "(ii) "Excluded NAICS code" does not include a NAICS code of the 2002 or 2007
241 North American Industry Classification System of the federal Executive Office of the
242 President, Office of Management and Budget, within:

- 243 (A) NAICS Subsector 333, Machinery Manufacturing;
244 (B) NAICS Subsector 334, Computer and Electronic Product Manufacturing;
245 (C) NAICS Code 336111, Automobile Manufacturing; or
246 (D) NAICS Subsector 519, Other Information Services.";
247 (2) the amendments to Subsection [59-7-302](#)(1)(n) in this bill supersede the
248 amendments to Subsection [59-7-302](#)(1)(l) in S.B. 132; and
249 (3) the amendments to Subsection [59-7-302](#)(2) in this bill supersede the amendments to
250 Subsection [59-7-302](#)(2) in S.B. 132.