

1 **INCOME TAX REVISIONS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Steve Eliason

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies corporate income tax provisions.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines when a corporation is doing business or exercising a corporate franchise in
- 13 the state for income tax purposes; and
- 14 ▶ makes technical changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill provides retrospective operation.

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **59-7-101**, as last amended by Laws of Utah 2018, Second Special Session, Chapters 2
22 and 3

23 **59-7-104**, as last amended by Laws of Utah 2018, Chapter 456

24 **59-7-319**, as last amended by Laws of Utah 2011, Chapter 69

25 **59-7-402**, as last amended by Laws of Utah 2009, Chapter 312

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

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

29 **59-7-101. Definitions.**

30 As used in this chapter:

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

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

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

39 (ii) the common parent directly owns at least 80% of the stock of at least one of the
40 corporations in the group.

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

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

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

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

49 (5) "Business income" means the same as that term is defined in Section 59-7-302.

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

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

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

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

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

57 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

58 commission may make rules defining "established securities market."

59 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
60 than 50% of the outstanding voting stock of:

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

63 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
64 Code; or

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

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

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

70 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
71 Internal Revenue Code.

72 (8) (a) "Controlling entity of a captive real estate investment trust" means an entity
73 that:

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

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

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

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

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

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

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

84 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal
85 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real

86 estate investment trust; or

87 (iii) a foreign real estate investment trust.

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

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

91 (10) "Corporation" includes:

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

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

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

99 (12) (a) "Doing business" includes any transaction in the course of [its] business by a
100 domestic corporation[;] or by a foreign corporation qualified to do or doing [intrastate]
101 business in this state.

102 (b) Except as provided in Subsection (12)(c) or Subsection 59-7-102(3), "doing
103 business" includes:

104 (i) the right to do business through incorporation or qualification;

105 (ii) [the] owning, renting, or leasing of real or personal property within this state; [and]

106 (iii) the participation in joint ventures, working and operating agreements, the
107 performance of which takes place in this state[;];

108 (iv) selling or performing a service in this state; and

109 (v) earning income from the use of intangible property in this state.

110 (c) "Doing business" does not include the business activity of a corporation if the
111 corporation's only business activity within the state is the solicitation of orders for sales of
112 tangible personal property that are protected under 15 U.S.C. Secs. 381 through 384.

113 (13) "Domestic corporation" means a corporation that is incorporated or organized

114 under the laws of this state.

115 (14) "Exercising a corporate franchise" does not include the business activity of a
116 corporation if the corporation's only business activity within the state is the solicitation of
117 orders for sales of tangible personal property that are protected under 15 U.S.C. Secs. 381
118 through 384.

119 [~~14~~] (15) (a) "Farmers' cooperative" means an association, corporation, or other
120 organization that is:

121 (i) (A) an association, corporation, or other organization of farmers or fruit growers; or

122 (B) an association, corporation, or other organization that is similar to an association,
123 corporation, or organization described in Subsection [~~14~~] (15)(a)(i)(A); and

124 (ii) organized and operated on a cooperative basis to:

125 (A) (I) market the products of members of the cooperative or the products of other
126 producers; and

127 (II) return to the members of the cooperative or other producers the proceeds of sales
128 less necessary marketing expenses on the basis of the quantity of the products of a member or
129 producer or the value of the products of a member or producer; or

130 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
131 other persons; and

132 (II) turn over the supplies and equipment described in Subsection [~~14~~]
133 (15)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or
134 other persons.

135 (b) (i) Subject to Subsection [~~14~~] (15)(b)(ii), for purposes of this Subsection [~~14~~]
136 (15), the commission by rule, made in accordance with Title 63G, Chapter 3, Utah
137 Administrative Rulemaking Act, shall define:

138 (A) the terms "member" and "producer"; and

139 (B) what constitutes an association, corporation, or other organization that is similar to
140 an association, corporation, or organization described in Subsection [~~14~~] (15)(a)(i)(A).

141 (ii) The rules made under this Subsection [~~14~~] (15)(b) shall be consistent with the

142 filing requirements under federal law for a farmers' cooperative.

143 ~~[(15)]~~ (16) "Foreign corporation" means a corporation that is not incorporated or
144 organized under the laws of this state.

145 ~~[(16)]~~ (17) (a) "Foreign operating company" means a corporation that:

146 (i) is incorporated in the United States;

147 (ii) conducts at least 80% of the corporation's business activity, as determined under
148 Section [59-7-401](#), outside the United States; and

149 (iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income -
150 Utah UDITPA Provisions, has:

151 (A) at least \$1,000,000 of payroll located outside the United States; and

152 (B) at least \$2,000,000 of property located outside the United States.

153 (b) "Foreign operating company" does not include a corporation that qualifies for the
154 Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.

155 ~~[(17)]~~ (18) (a) "Foreign real estate investment trust" means:

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

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

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

160 (II) cash or cash equivalents; or

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

162 (B) the business entity is:

163 (I) not subject to income taxation:

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

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

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

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

170 business entity's:

171 (I) shares or beneficial interests; and

172 (II) on an annual basis;

173 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively

174 by a single person:

175 (Aa) the voting power of the business entity; or

176 (Bb) the value of the shares or beneficial interests of the business entity; or

177 (II) the shares of the business entity are regularly traded on an established securities

178 market; and

179 (E) the business entity is organized in a country that has a tax treaty with the United

180 States; or

181 (ii) a listed Australian property trust.

182 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

183 commission may make rules defining:

184 (i) "cash or cash equivalents";

185 (ii) "established securities market"; or

186 (iii) "listed Australian property trust."

187 [~~18~~] (19) "Income" includes losses.

188 [~~19~~] (20) "Internal Revenue Code" means Title 26 of the United States Code as

189 effective during the year in which Utah taxable income is determined.

190 [~~20~~] (21) "Nonbusiness income" means the same as that term is defined in Section

191 [59-7-302](#).

192 [~~21~~] (22) "Real estate investment trust" means the same as that term is defined in

193 Section 856, Internal Revenue Code.

194 [~~22~~] (23) "Related expenses" means:

195 (a) expenses directly attributable to nonbusiness income; and

196 (b) the portion of interest or other expense indirectly attributable to both nonbusiness

197 and business income that bears the same ratio to the aggregate amount of such interest or other

198 expense, determined without regard to this Subsection [~~(22)~~] (23), as the average amount of the
199 asset producing the nonbusiness income bears to the average amount of all assets of the
200 taxpayer within the taxable year.

201 [~~(23)~~] (24) "S corporation" means an S corporation as defined in Section 1361, Internal
202 Revenue Code.

203 [~~(24)~~] (25) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
204 Section 168, Internal Revenue Code.

205 [~~(25)~~] (26) "State of the United States" includes any of the 50 states or the District of
206 Columbia.

207 [~~(26)~~] (27) (a) "Taxable year" means the calendar year or the fiscal year ending during
208 such calendar year upon the basis of which the adjusted income is computed.

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

212 [~~(27)~~] (28) "Taxpayer" means any corporation subject to the tax imposed by this
213 chapter.

214 [~~(28)~~] (29) "Threshold level of business activity" means business activity in the United
215 States equal to or greater than 20% of the corporation's total business activity as determined
216 under Section 59-7-401.

217 [~~(29)~~] (30) (a) "Unadjusted income" means federal taxable income as determined on a
218 separate return basis before intercompany eliminations as determined by the Internal Revenue
219 Code, before the net operating loss deduction and special deductions for dividends received.

220 (b) For the last taxable year of a taxpayer beginning on or before December 31, 2017,
221 "unadjusted income" includes deferred foreign income described in Section 965(a), Internal
222 Revenue Code.

223 [~~(30)~~] (31) (a) "Unitary group" means a group of corporations that:

224 (i) are related through common ownership; and

225 (ii) by a preponderance of the evidence as determined by a court of competent

226 jurisdiction or the commission, are economically interdependent with one another as
227 demonstrated by the following factors:

- 228 (A) centralized management;
- 229 (B) functional integration; and
- 230 (C) economies of scale.

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

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

233 [~~31~~] (32) "United States" includes the 50 states and the District of Columbia.

234 [~~32~~] (33) "Utah net loss" means the current year Utah taxable income before Utah net
235 loss deduction, if determined to be less than zero.

236 [~~33~~] (34) "Utah net loss deduction" means the amount of Utah net losses from other
237 taxable years that a taxpayer may carry forward to the current taxable year in accordance with
238 Section 59-7-110.

239 [~~34~~] (35) (a) "Utah taxable income" means Utah taxable income before net loss
240 deduction less Utah net loss deduction.

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

244 [~~35~~] (36) "Utah taxable income before net loss deduction" means apportioned income
245 plus nonbusiness income allocable to Utah net of related expenses.

246 [~~36~~] (37) (a) "Water's edge combined report" means a report combining the income
247 and activities of:

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

249 (A) corporations organized or incorporated in the United States, including those
250 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
251 936, Internal Revenue Code, in accordance with Subsection [~~36~~] (37)(b); and

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

254 (ii) an affiliated group electing to file a water's edge combined report under Subsection
255 [59-7-402](#)(2).

256 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
257 Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a
258 unitary group.

259 [~~37~~] [\(38\)](#) "Worldwide combined report" means the combination of the income and
260 activities of all members of a unitary group irrespective of the country in which the
261 corporations are incorporated or conduct business activity.

262 Section 2. Section **59-7-104** is amended to read:

263 **59-7-104. Tax -- Minimum tax.**

264 (1) Each domestic and foreign corporation, except a corporation that is exempt under
265 Section [59-7-102](#), shall pay an annual tax to the state based on the corporation's Utah taxable
266 income for the taxable year for the privilege of exercising the corporation's corporate franchise,
267 as defined in Section [59-7-101](#), or for the privilege of doing business, as defined in Section
268 [59-7-101](#), in the state.

269 (2) The tax shall be 4.95% of a corporation's Utah taxable income.

270 (3) The minimum tax a corporation shall pay under this chapter is \$100.

271 Section 3. Section **59-7-319** is amended to read:

272 **59-7-319. Circumstances under which a receipt, rent, royalty, or sale is**
273 **considered to be in this state.**

274 (1) (a) Subject to Subsection (1)(b), as used in this section, "regulated investment
275 company" is as defined in Section 851(a), Internal Revenue Code, in effect for the taxable year.

276 (b) "Regulated investment company" includes a trustee or sponsor of an employee
277 benefit plan that has an account in a regulated investment company.

278 (2) The following are considered to be in this state:

279 (a) a rent in connection with:

280 (i) real property if the real property is in this state; or

281 (ii) tangible personal property if the tangible personal property is in this state;

282 (b) a royalty in connection with real property if the real property is in this state;

283 (c) a sale in connection with real property if the real property is in this state; or

284 (d) other income in connection with real property or tangible personal property if the
285 real property or tangible personal property is in this state.

286 (3) (a) Subject to Subsection (3)(b), a receipt from the performance of a service is
287 considered to be in this state if the purchaser of the service receives a greater benefit of the
288 service in this state than in any other [~~state.~~] single:

289 (i) foreign country; or

290 (ii) state, as defined in Section [68-3-12.5](#).

291 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
292 commission may by rule prescribe the circumstances under which a purchaser of a service
293 receives a greater benefit of the service in this state than in any other [~~state.~~] single:

294 (i) foreign country; or

295 (ii) state, as defined in Section [68-3-12.5](#).

296 (4) (a) Subject to Subsection (4)(b), a receipt in connection with intangible property is
297 considered to be in this state if the intangible property is used in this state.

298 (b) If the intangible property described in Subsection (4)(a) is used in this state and
299 outside this state, a receipt in connection with the intangible property shall be apportioned to
300 this state in accordance with Subsection (4)(c).

301 (c) For purposes of Subsection (4)(b), for a taxable year the percentage of a receipt in
302 connection with intangible property that is considered to be in this state is the percentage of the
303 use of the intangible property that occurs in this state during the taxable year.

304 (5) (a) Notwithstanding Subsections (2) through (4), a sale, other than a sale of tangible
305 personal property, derived, directly or indirectly, from the sale of management, distribution, or
306 administration services to, or on behalf of a regulated investment company, is considered to be
307 in this state:

308 (i) to the extent that shareholders of the regulated investment company are domiciled in
309 the state; and

310 (ii) as provided in this Subsection (5).

311 (b) For purposes of Subsection (5)(a), the amount of a sale, other than a sale of tangible
312 personal property, that is considered to be in this state is calculated by determining the product
313 of:

314 (i) the taxpayer's total dollar amount of sales of the services; and

315 (ii) a fraction, the numerator of which is the average of the sum of the beginning of the
316 year and the end of year balance of shares owned by the investment company shareholders
317 domiciled in this state and the denominator of which is the average of the sum of the beginning
318 of the year and end of year balance of shares owned by the investment company shareholders.

319 (c) A separate computation shall be made to determine the sales for each investment
320 company.

321 (6) (a) Notwithstanding Subsections (2) through (4) and subject to Subsection (6)(b),
322 the following sales are considered to be in this state to the extent that customers of a securities
323 brokerage business are domiciled in the state:

324 (i) a sale, other than a sale of tangible personal property, derived, directly or indirectly,
325 from the sale of a securities brokerage service by a taxpayer if that taxpayer is primarily
326 engaged in providing a service in this state to a regulated investment company; or

327 (ii) a sale, other than a sale of tangible personal property, derived, directly or indirectly,
328 from the sale of a securities brokerage service by a taxpayer that is an affiliate of a taxpayer
329 that provides a service in this state to a regulated investment company.

330 (b) For purposes of Subsection (6)(a), the amount of a sale, other than a sale of tangible
331 personal property, that is considered to be in this state is calculated by determining the product
332 of:

333 (i) the taxpayer's total dollar amount of sales of securities brokerage services; and

334 (ii) a fraction, the numerator of which is the receipts from securities brokerage services
335 from customers of the taxpayer domiciled in this state, and the denominator of which is the
336 receipts from securities brokerage services from all customers of the taxpayer.

337 (7) Whether sales by an airline, other than sales of tangible personal property, are in

338 this state is determined as provided in this section, subject to the calculation required by
339 Subsection 59-7-317(2).

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

341 **59-7-402. Water's edge combined report.**

342 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection
343 59-7-101[(36)](37)(a) is doing business in Utah, the unitary group shall file a water's edge
344 combined report.

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

347 (i) doing business in Utah;

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

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

351 (b) Each corporation within the affiliated group that is doing business in Utah must
352 consent to filing a combined report. If an affiliated group elects to file a combined report, each
353 corporation within the affiliated group that is doing business in Utah must file a combined
354 report.

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

357 Section 5. **Retrospective operation.**

358 This bill has retrospective operation for a taxable year beginning on or after January 1,
359 2019.