

**INCOME TAX REFORM**

2018 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill modifies the business income apportionment provisions.

**Highlighted Provisions:**

This bill:

- ▶ addresses the apportionment of business income for income tax purposes by:
  - phasing in a requirement that certain taxpayers use only the sales factor to calculate the fraction for apportioning business income to the state; and
  - allowing optional apportionment taxpayers to choose between a single sales factor and an equally weighted method to calculate the fraction for apportioning business income to the state;
- ▶ provides a method for a taxpayer to determine if the taxpayer is an optional apportionment taxpayer; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

- 59-7-110**, as last amended by Laws of Utah 2016, Chapters 311 and 323
- 59-7-302 (Effective 01/01/18)**, as last amended by Laws of Utah 2017, Chapters 181 and 268
- 59-7-311**, as last amended by Laws of Utah 2016, Chapters 311 and 323
- 59-7-312**, as last amended by Laws of Utah 2008, Chapter 283
- 59-7-315**, as last amended by Laws of Utah 2008, Chapter 283

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

33 Section 1. Section **59-7-110** is amended to read:

34 **59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.**

35 (1) The amount of Utah net loss that shall be carried back or forward to offset income  
36 of another taxable year is determined as provided in this section.

37 ~~[(2) (a) Subject to the other provisions of this section, a Utah net loss from a taxable  
38 year beginning before January 1, 1994, shall be carried back three taxable years preceding the  
39 taxable year of the loss and any remaining loss shall be carried forward five taxable years  
40 following the taxable year of the loss.]~~

41 ~~[(b) (i)]~~ (2) (a) Subject to the other provisions of this section, a taxpayer may:

42 (i) carry back a Utah net loss from a taxable year ~~[beginning on or after January 1,  
43 1994, may be carried back]~~ for three taxable years preceding the taxable year of the loss; and  
44 [carried]

45 (ii) carry forward a Utah net loss from a taxable year for 15 taxable years following the  
46 taxable year of the loss.

47 ~~[(ii) (b) If [an election is made to] a taxpayer elects to forego the federal net operating  
48 loss carryback, the taxpayer may not carry back a Utah net loss [is not eligible to be carried  
49 back] unless the taxpayer makes an election [is made] for state purposes.~~

50 (3) A taxpayer shall carry a Utah net loss ~~[shall be carried]~~ to the earliest eligible year  
51 for which the Utah taxable income before net loss deduction, minus Utah net losses from  
52 previous years that ~~[were applied or required to be applied]~~ a taxpayer applied or was required  
53 to apply to offset income, is not less than zero.

54 (4) (a) Except as provided in Subsection (4)(b), the amount of Utah net loss that a  
55 taxpayer shall ~~[be carried]~~ carry to the year identified in Subsection (3) is the lesser of:

56 (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that  
57 ~~[were]~~ a taxpayer carried to previous years; or

58 (ii) the remaining Utah taxable income before net loss deduction of the year identified  
59 in Subsection (3) after deduction of Utah net losses from previous years that ~~[were carried or  
60 required to be carried]~~ a taxpayer carried or was required to carry to the year identified in  
61 Subsection (3).

62 (b) (i) The amount of Utah net loss ~~[carried]~~ that a taxpayer carries back from a taxable  
63 year may not exceed \$1,000,000 in Utah taxable income for each return filed under this chapter

64 in a taxable year.

65 (ii) A taxpayer may carry forward a Utah net loss in excess of \$1,000,000 [~~may be~~  
66 ~~carried forward~~].

67 (iii) A taxpayer may carry a remaining Utah net loss [~~shall be available to be carried~~] to  
68 one or more taxable years in accordance with this section.

69 (5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of  
70 another corporation may not deduct any net loss incurred by the acquired corporation prior to  
71 the date of acquisition.

72 (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of  
73 the state of incorporation.

74 (b) An acquired corporation may deduct the acquired corporation's net losses incurred  
75 before the date of acquisition against the acquired corporation's separate income as calculated  
76 under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or  
77 business substantially the same as that conducted before the acquisition.

78 (6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation  
79 that is acquired by a unitary group may deduct is calculated by:

80 (a) subject to Subsection (7):

81 (i) except as provided in Subsection (6)(a)(ii), calculating the sum of:

82 (A) an amount determined by dividing the average value of the acquired corporation's  
83 real and tangible personal property owned or rented and used in this state during the taxable  
84 year by the average value of all of the unitary group's real and tangible personal property owned  
85 or rented and used during the taxable year;

86 (B) an amount determined by dividing the total amount paid in this state during the  
87 taxable year by the acquired corporation for compensation by the total compensation paid  
88 everywhere by the unitary group during the taxable year; and

89 (C) an amount determined by [~~:-~~(H)] dividing the total sales of the acquired corporation  
90 in this state during the taxable year by the total sales of the unitary group everywhere during the  
91 taxable year; [~~and~~] or

92 [(H) if the unitary group elects to calculate the fraction for apportioning business  
93 income to this state using the method described in Subsection 59-7-311(2)(b), multiplying the  
94 amount calculated under Subsection (6)(a)(i)(C)(I) by two; or]

95 (ii) if the unitary group is required or elects to calculate the fraction for apportioning  
 96 business income to this state using the method described in Subsection 59-7-311[(3)](2),  
 97 calculating an amount determined by dividing the total sales of the acquired corporation in this  
 98 state during the taxable year by the total sales of the unitary group everywhere during the  
 99 taxable year;

100 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of  
 101 the fraction the unitary group uses to apportion business income to this state[:(1)] for that  
 102 taxable year[; and (ii)] in accordance with Section 59-7-311;

103 (c) multiplying the amount calculated under Subsection (6)(b) by the business income  
 104 of the unitary group for the taxable year that is subject to apportionment under Section  
 105 59-7-311; and

106 (d) calculating the sum of:

107 (i) the amount calculated under Subsection (6)(c); and

108 (ii) the following amounts allocable to the acquired corporation for the taxable year:

109 (A) nonbusiness income allocable to this state; or

110 (B) nonbusiness loss allocable to this state.

111 (7) The amounts calculated under Subsection (6)(a) shall be derived in the same  
 112 manner as those amounts are derived for purposes of apportioning the unitary group's business  
 113 income before deducting the net loss, including a modification made in accordance with  
 114 Section 59-7-320.

115 Section 2. Section **59-7-302 (Effective 01/01/18)** is amended to read:

116 **59-7-302 (Effective 01/01/18). Definitions -- Determination of taxpayer status.**

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

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

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

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

123 (d) "Business income" means income arising from transactions and activity in the  
 124 regular course of the taxpayer's trade or business and includes income from tangible and  
 125 intangible property if the acquisition, management, and disposition of the property constitutes

126 integral parts of the taxpayer's regular trade or business operations.

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

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

131 (g) "Excluded NAICS code" means a NAICS code of the 2017 North American  
132 Industry Classification System of the federal Executive Office of the President, Office of  
133 Management and Budget, within:

134 (i) NAICS Code 211120, Crude Petroleum Extraction;

135 (ii) NAICS Subsector 2121, Coal Mining;

136 (iii) NAICS Subsector 2212, Natural Gas Distribution;

137 (iv) NAICS Subsector 311, Food Manufacturing;

138 (v) NAICS Subsector 3121, Beverage Manufacturing;

139 (vi) NAICS Code 327310, Cement Manufacturing;

140 (vii) NAICS Subsector 482, Rail Transportation; or

141 (viii) NAICS Code 522110, Commercial Banking.

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

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

145 (A) a spare engine; or

146 (B) tangible personal property described in Subsection 59-2-102(27) owned by an air  
147 charter service or an air contract service.

148 ~~[(h)]~~ (i) "Nonbusiness income" means all income other than business income.

149 ~~[(i) Subject to Subsection (2), "optional sales factor weighted taxpayer" means:]~~

150 ~~[(i) for a taxpayer that is not a unitary group, regardless of the number of economic~~

151 ~~activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales~~

152 ~~everywhere generated by economic activities performed by the taxpayer if the economic~~

153 ~~activities are classified in a NAICS code within NAICS Subsector 334, Computer and~~

154 ~~Electronic Product Manufacturing, of the 2002 or 2007 North American Industry Classification~~

155 ~~System of the federal Executive Office of the President, Office of Management and Budget; or]~~

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

157 taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if  
 158 the economic activities are classified in a NAICS code within NAICS Subsector 334,  
 159 Computer and Electronic Product Manufacturing, of the 2002 or 2007 North American  
 160 Industry Classification System of the federal Executive Office of the President, Office of  
 161 Management and Budget.]

162 (j) "Optional apportionment taxpayer" means a taxpayer described in Subsection (3).

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

164 [(k)] (l) "Sales" means all gross receipts of the taxpayer not allocated under Sections  
 165 59-7-306 through 59-7-310.

166 [(l)] (m) [Subject to Subsection (2), "sales] "Sales factor weighted taxpayer" means[:] a  
 167 taxpayer described in Subsection (2).

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

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

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

176 [(C) a NAICS code within NAICS Sector 31-33, Manufacturing, other than NAICS  
 177 Code 336111, Automobile Manufacturing;]

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

179 [(E) a NAICS code within NAICS Sector 51, Information, other than NAICS Subsector  
 180 519, Other Information Services; or]

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

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

187 [(m)] (n) "State" means any state of the United States, the District of Columbia, the

188 Commonwealth of Puerto Rico, any territory or possession of the United States, and any  
189 foreign country or political subdivision thereof.

190 ~~[(n)]~~ (o) "Transportation revenue" means revenue an airline earns from:

191 (i) transporting a passenger or cargo; or

192 (ii) from miscellaneous sales of merchandise as part of providing transportation  
193 services.

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

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

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

198 ~~[(2) The following apply to Subsections (1)(i) and (1):]~~

199 ~~[(a) (i) Subject to the other provisions of this Subsection (2), for each taxable year, a  
200 taxpayer shall determine whether the taxpayer is a sales factor weighted taxpayer.]~~

201 (2) (a) A taxpayer is a sales factor weighted taxpayer if, regardless of the number of  
202 economic activities the taxpayer performs, the taxpayer generates greater than 50% of the  
203 taxpayer's total sales everywhere from economic activities that are classified in a NAICS code  
204 of the 2002 or 2007 North American Industry Classification System of the federal Executive  
205 Office of the President, Office of Management and Budget, other than:

206 (i) a NAICS code within NAICS Sector 21, Mining;

207 (ii) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;

208 (iii) a NAICS code within NAICS Sector 31-33, Manufacturing, except NAICS Code  
209 336111, Automobile Manufacturing;

210 (iv) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;

211 (v) a NAICS code within NAICS Sector 51, Information, except NAICS Subsector  
212 519, Other Information Services; or

213 (vi) a NAICS code within NAICS Sector 52, Finance and Insurance.

214 ~~[(ii)]~~ (b) A taxpayer shall ~~[make the determination required by Subsection (2)(a)(i)]~~  
215 determine if the taxpayer is a sales factor weighted taxpayer each year before the due date for  
216 filing the taxpayer's return under this chapter for the taxable year, including extensions.

217 ~~[(iii)]~~ (c) For purposes of making the determination required by Subsection (2)(a)(i),  
218 total sales everywhere include only the total sales everywhere:

219 ~~[(A)]~~ (i) as determined in accordance with this part; and  
220 ~~[(B)]~~ (ii) made during the taxable year for which a taxpayer makes the determination  
221 required by Subsection (2)(a)(~~(i)~~).

222 (3) (a) A taxpayer is an optional apportionment taxpayer if the average calculated in  
223 accordance with Subsection (3)(b) is greater than .50.

224 (b) To calculate the average described in Subsection (3)(a), a taxpayer shall:

225 (i) calculate the following two fractions:

226 (A) the property factor fraction as described in Subsection 59-7-312(3); and

227 (B) the payroll factor fraction as described in Subsection 59-7-315(3);

228 (ii) add together the fractions described in Subsection (3)(b)(i); and

229 (iii) divide the sum calculated in Subsection (3)(b)(ii):

230 (A) except as provided in Subsection (3)(b)(iii)(B), by two; or

231 (B) if either the property factor fraction or the payroll property fraction has a  
232 denominator of zero or is excluded in accordance with Subsection 59-7-312(3)(b) or  
233 59-7-315(3)(b), by one.

234 (c) A taxpayer shall determine if the taxpayer is a sales factor weighted taxpayer each  
235 year before the due date for filing the taxpayer's return under this chapter for the taxable year,  
236 including extensions.

237 ~~[(b) (i) (A) Subject to other provisions of this Subsection (2), for each taxable year, a~~  
238 ~~taxpayer that is not a sales factor weighted taxpayer may determine whether the taxpayer is an~~  
239 ~~optional sales factor weighted taxpayer.]~~

240 ~~[(B) A taxpayer that is not a sales factor weighted taxpayer shall determine that the~~  
241 ~~taxpayer is an optional sales factor weighted taxpayer before the taxpayer may use the~~  
242 ~~apportionment options described in Subsection 59-7-311(4).]~~

243 ~~[(ii) A taxpayer making the determination described in Subsection (2)(b)(i) shall make~~  
244 ~~the determination before the due date for filing the taxpayer's return under this chapter for the~~  
245 ~~taxable year, including extensions.]~~

246 ~~[(iii) For purposes of making the determination described in Subsection (2)(b)(i), total~~  
247 ~~sales everywhere include only the total sales everywhere:]~~

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

249 ~~[(B) made during the taxable year for which a taxpayer makes a determination~~



250 described in Subsection (2)(b)(i).]

251 ~~[(e)]~~ (4) A taxpayer that files a return as a unitary group for a taxable year is considered  
252 to be a unitary group for that taxable year.

253 ~~[(d)]~~ (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
254 Act, the commission may define the term "economic activity" consistent with the use of the  
255 term "activity" in the 2007 North American Industry Classification System of the federal  
256 Executive Office of the President, Office of Management and Budget.

257 Section 3. Section **59-7-311** is amended to read:

258 **59-7-311. Method of apportionment of business income.**

259 (1) For a taxable year, a taxpayer shall apportion all business income [~~shall be~~  
260 ~~apportioned~~] to this state by multiplying the business income by a fraction calculated as  
261 provided in this section.

262 ~~[(2) Subject to the other provisions of this part, a taxpayer, except for a sales factor~~  
263 ~~weighted taxpayer and an optional sales factor weighted taxpayer, shall calculate the fraction~~  
264 ~~for apportioning business income to this state using one of the following fractions:]~~

265 ~~[(a) a fraction where:]~~

266 ~~[(i) the numerator of the fraction is the sum of:]~~

267 ~~[(A) the property factor as calculated under Section 59-7-312;]~~

268 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

269 ~~[(C) the sales factor as calculated under Section 59-7-317; and]~~

270 ~~[(ii) the denominator of the fraction is three; or]~~

271 ~~[(b) a fraction where:]~~

272 ~~[(i) the numerator of the fraction is the sum of:]~~

273 ~~[(A) the property factor as calculated under Section 59-7-312;]~~

274 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

275 ~~[(C) the sales factor as calculated under Section 59-7-317 multiplied by two; and]~~

276 ~~[(ii) the denominator of the fraction is four.]~~

277 ~~[(3)]~~ (2) Subject to the other provisions of this part, a sales factor weighted taxpayer  
278 shall calculate the fraction for apportioning business income to this state using a fraction  
279 where:

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

281 59-7-317; and

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

283 ~~[(4)] (3)~~ Subject to the other provisions of this part, an optional [~~sales factor weighted~~]  
284 apportionment taxpayer shall calculate the fraction for apportioning business income to this  
285 state [~~using a method described in Subsection (2)(a), (2)(b), or (3).~~] using one of the following  
286 fractions:

287 (a) the fraction described in Subsection (2); or

288 (b) the fraction where:

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

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

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

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

293 (ii) the denominator of the fraction is three.

294 (4) (a) Subject to other provisions of this part, a taxpayer, other than a sales factor  
295 weighted taxpayer or an optional apportionment taxpayer, shall calculate the fraction for  
296 apportioning business income to this state as provided in Subsections (4)(b) through (d).

297 (b) For the taxable year that begins on or after January 1, 2019, but begins on or before  
298 December 31, 2019:

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

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

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

302 (C) the sales factor as calculated under Subsection (4)(e)(i); and

303 (ii) the denominator of the fraction is six.

304 (c) For the taxable year that begins on or after January 1, 2020, but begins on or before  
305 December 31, 2020:

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

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

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

309 (C) the sales factor as calculated under Subsection (4)(e)(ii); and

310 (ii) the denominator of the fraction is 10.

311 (d) For a taxable year that begins on or after January 1, 2021, a taxpayer, other than a

312 sales factor weighted taxpayer or an optional apportionment taxpayer, shall calculate the  
 313 fraction as described in Subsection (2).

314 (e) (i) For the taxable year that begins on or after January 1, 2019, but begins on or  
 315 before December 31, 2019, the sales factor shall be:

316 (A) calculated as described in Section 59-7-317; and

317 (B) multiplied by four.

318 (ii) For the taxable year that begins on or after January 1, 2020, but begins on or before  
 319 December 31, 2020, the sales factor shall be:

320 (A) calculated as described in Section 59-7-317; and

321 (B) multiplied by eight.

322 (5) (a) The taxpayer shall determine the method for calculating the fraction for  
 323 apportioning business income to this state under this section on or before the due date for filing  
 324 the taxpayer's return under this chapter for the taxable year, including extensions.

325 (b) The method described in Subsection (5)(a) is in effect for the taxable year.

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

329 Section 4. Section **59-7-312** is amended to read:

330 **59-7-312. Property factor for apportionment of business income -- Mobile flight**  
 331 **equipment of an airline.**

332 (1) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3), the property factor  
 333 is a fraction[;]:

334 (a) the numerator of which is the average value of the taxpayer's real and tangible  
 335 personal property owned or rented and used in this state during the tax period; and

336 (b) the denominator of which is the average value of all the taxpayer's real and tangible  
 337 personal property owned or rented and used during the tax period.

338 (2) The average value of an airline's real and tangible personal property owned or  
 339 rented and used in this state attributable to mobile flight equipment for purposes of the  
 340 numerator of the fraction described in Subsection (1) shall be calculated for each aircraft type  
 341 by [~~determining the product of~~] multiplying:

342 (a) the total average value of the airline's mobile flight equipment of the aircraft type

343 owned or rented and used during the tax period; and

344 (b) a fraction[;]:

345 (i) the numerator of which is the Utah revenue ton miles for the aircraft type; and

346 (ii) the denominator of which is the airline revenue ton miles for the aircraft type.

347 (3) (a) For purposes of Subsection 59-7-302(3)(b)(i)(A) and subject to Subsection

348 (3)(b), the property factor is a fraction:

349 (i) the numerator of which is the value of the property in this state that is attributable to  
350 economic activities that are classified in an excluded NAICS code; and

351 (ii) the denominator of which is the value of all property in this state.

352 (b) A taxpayer shall exclude property from the calculation of the property factor  
353 fraction in Subsection (3)(a) if the property may be attributed to economic activities in both  
354 excluded NAICS codes and NAICS codes that are not excluded NAICS codes.

355 Section 5. Section **59-7-315** is amended to read:

356 **59-7-315. Payroll factor for apportionment of business income -- Compensation**  
357 **of flight personnel by an airline.**

358 (1) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3), the payroll factor is  
359 a fraction[;]:

360 (a) the numerator of which is the total amount paid in this state during the tax period by  
361 the taxpayer for compensation[;]; and

362 (b) the denominator of which is the total compensation paid everywhere during the tax  
363 period.

364 (2) The total amount paid in this state during the tax period by an airline for  
365 compensation attributable to the compensation of flight personnel for purposes of the  
366 numerator of the fraction described in Subsection (1) shall be calculated for each aircraft type  
367 by [~~determining the product of~~] multiplying:

368 (a) the total amount paid during the tax period by the airline to flight personnel for  
369 compensation for the aircraft type; and

370 (b) a fraction[;]:

371 (i) the numerator of which is the Utah revenue ton miles for the aircraft type; and

372 (ii) the denominator of which is the airline revenue ton miles for the aircraft type.

373 (3) (a) For purposes of Subsection 59-7-302(3)(b)(i)(B) and subject to Subsection

374 (3)(b), the payroll factor is a fraction:

375 (i) the numerator of which is the amount of the payroll in this state that is attributable  
376 to economic activities that are classified in an excluded NAICS code; and

377 (ii) the denominator of which is the total amount of the payroll in this state.

378 (b) A taxpayer engaged in economic activities that are classified in an excluded NAICS  
379 code shall exclude an individual's payroll from the calculation of the payroll factor fraction in  
380 Subsection (3)(a) if the individual's payroll may be attributed:

381 (i) to economic activities in both excluded NAICS codes and NAICS codes that are not  
382 excluded NAICS codes; or

383 (ii) to providing management, finance, accounting, legal, or human resource services.

384 **Section 6. Effective date.**

385 This bill takes effect for a taxable year beginning on or after on January 1, 2019.