

**REPATRIATION TAX MODIFICATIONS**

2019 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to payment of income tax on deferred foreign income.

**Highlighted Provisions:**

This bill:

- ▶ adds deferred foreign income to the definition of unadjusted income for corporate income tax purposes;
- ▶ exempts an additional portion of deferred foreign income from state income tax;
- ▶ modifies a corporate payment schedule for deferred foreign income;
- ▶ creates a refundable tax credit for certain taxpayers for a portion of state income tax liability on deferred foreign income;
- ▶ modifies an uncodified effective date; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**59-7-101**, as last amended by Laws of Utah 2011, Chapter 69

**59-7-118**, as enacted by Laws of Utah 2018, Chapter 405

ENACTS:

**59-7-624**, Utah Code Annotated 1953

**59-10-1112**, Utah Code Annotated 1953

**Uncodified Material Affected:**

AMENDS UNCODIFIED MATERIAL:

33 **Uncodified Section 5, Laws of Utah 2018, Chapter 405, Retrospective operation.**

34 This uncodified section affects Sections 59-2-1208, 59-2-1209, and 59-10-136.

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

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

38 **59-7-101. Definitions.**

39 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

63 (ii) more than 50% of the voting power or value of the shares or beneficial interests of

64 the real estate investment trust are directly, indirectly, or constructively:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

94 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal

95 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real  
96 estate investment trust; or

97 (iii) a foreign real estate investment trust.

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

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

101 (10) "Corporation" includes:

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

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

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

109 (12) (a) "Doing business" includes any transaction in the course of its business by a  
110 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in  
111 this state.

112 (b) Except as provided in Subsection 59-7-102(3), "doing business" includes:

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

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

115 (iii) the participation in joint ventures, working and operating agreements, the  
116 performance of which takes place in this state.

117 (13) "Domestic corporation" means a corporation that is incorporated or organized  
118 under the laws of this state.

119 (14) (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  
122 growers; or

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

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

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

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

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

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

135 (b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the  
136 commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative  
137 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)(a)(i)(A).

141 (ii) The rules made under this Subsection (14)(b) shall be consistent with the filing  
142 requirements under federal law for a farmers' cooperative.

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

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

146 (i) ~~["the corporation"]~~ 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, is conducted outside the United States; and

149 (iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income -  
150 Utah UDITPA Provisions, ~~["the corporation"]~~ 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) (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) "Income" includes losses.

188 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective  
189 during the year in which Utah taxable income is determined.

190 (20) "Nonbusiness income" [~~is as~~] means the same as that term is defined in Section  
191 59-7-302.

192 (21) "Real estate investment trust" [~~is as~~] means the same as that term is defined in  
193 Section 856, Internal Revenue Code.

194 (22) "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 [~~which~~] that bears the same ratio to the aggregate amount of such interest  
198 or other expense, determined without regard to this Subsection (22), as the average amount of  
199 the asset producing the nonbusiness income bears to the average amount of all assets of the  
200 taxpayer within the taxable year.

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

203 [~~(23)~~] (24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under  
204 Section 168, Internal Revenue Code.

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

207 (26) (a) "Taxable year" means the calendar year or the fiscal year ending during such  
208 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) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

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

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

219            (b) "Unadjusted income" includes deferred foreign income described in Section 965(a),  
220 Internal Revenue Code.

221            (30) (a) "Unitary group" means a group of corporations that:

222            (i) are related through common ownership; and

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

224 jurisdiction or the commission, are economically interdependent with one another as

225 demonstrated by the following factors:

226            (A) centralized management;

227            (B) functional integration; and

228            (C) economies of scale.

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

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

231            (31) "United States" includes the 50 states and the District of Columbia.

232            (32) "Utah net loss" means the current year Utah taxable income before Utah net loss

233 deduction, if determined to be less than zero.

234            (33) "Utah net loss deduction" means the amount of Utah net losses from other taxable

235 years that may be carried back or carried forward to the current taxable year in accordance with

236 Section 59-7-110.

237            (34) (a) "Utah taxable income" means Utah taxable income before net loss deduction

238 less Utah net loss deduction.

239            (b) "Utah taxable income" includes income from tangible or intangible property located

240 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign

241 commerce.

242            (35) "Utah taxable income before net loss deduction" means apportioned income plus

243 nonbusiness income allocable to Utah net of related expenses.

244            (36) (a) "Water's edge combined report" means a report combining the income and

245 activities of:

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

247            (A) corporations organized or incorporated in the United States, including those

248 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section

249 936, Internal Revenue Code, in accordance with Subsection (36)(b); and



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

252 (ii) an affiliated group electing to file a water's edge combined report under Subsection  
253 59-7-402(2).

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

257 (37) "Worldwide combined report" means the combination of the income and activities  
258 of all members of a unitary group irrespective of the country in which the corporations are  
259 incorporated or conduct business activity.

260 Section 2. Section **59-7-118** is amended to read:

261 **59-7-118. Section 965, Internal Revenue Code -- Installment payments.**

262 (1) As used in this section:

263 (a) "Deferred foreign income" means income described in Section 965(a), Internal  
264 Revenue Code.

265 (b) "Originally calculated" means the calculation of state tax liability under this chapter  
266 on deferred foreign income:

267 (i) after making the subtractions described in Subsections 59-7-106(1)(k) and (3); and

268 (ii) without making the adjustments described in Subsection (4).

269 ~~[(1)]~~ (2) Subject to the other provisions of this section, a corporation may pay in eight  
270 installments the tax owed under this chapter on deferred foreign income [~~described in Section~~  
271 ~~965, Internal Revenue Code~~].

272 ~~[(2)]~~ (3) Subsection ~~[(1)]~~ (2) applies:

273 (a) to a corporation that:

274 (i) is authorized to make an election under Section 965(h), Internal Revenue Code; and

275 (ii) apportions deferred foreign income [~~described in Section 965, Internal Revenue~~  
276 ~~Code,~~] to this state; and

277 (b) for a tax year in which a corporation makes an election under Section 965(h),  
278 Internal Revenue Code, for purposes of the corporation's federal income tax.

279 ~~[(3) The same provisions that apply to an election made under Section 965(h), Internal~~  
280 ~~Revenue Code, for federal purposes apply to an installment payment made under this section.]~~

281 (4) (a) For the taxable year beginning on or after January 1, 2019, but beginning on or  
282 before December 31, 2019, a corporation that owed a tax under this chapter on deferred foreign  
283 income shall recalculate the corporation's state tax liability for deferred foreign income for the  
284 last taxable year that began on or before December 31, 2017, by:

285 (i) subtracting 80% of the amount of deferred foreign income that is included in  
286 unadjusted income from the amount of deferred foreign income;

287 (ii) calculating the portion of the amount calculated in Subsection (4)(a)(ii)(A) that is  
288 apportioned to the state using the apportionment fraction:

289 (A) without interest expensing or factor relief; and

290 (B) for the taxable year in which the tax on deferred foreign income was due; and

291 (iii) multiplying the amount calculated in Subsection (4)(a)(ii)(B) by 5%.

292 (b) For purposes of this Subsection (4), deferred foreign income described in Section  
293 965(a), Internal Revenue Code:

294 (i) is not a dividend considered to be received or received under Subsection  
295 59-7-106(1)(k); and

296 (ii) does not include any deductions allowed under Section 965(c), Internal Revenue  
297 Code.

298 (5) (a) A corporation that elected to pay the tax owed on deferred foreign income under  
299 this chapter in installments shall pay the tax as follows:

300 (i) for the first two installments, 8% of the tax liability as originally calculated;

301 (ii) for the next three installments, 8% of the tax liability remaining after:

302 (A) making the calculation described in Subsection (4); and

303 (B) subtracting from the liability calculated in accordance with Subsection (4), the  
304 amount of tax paid in any previous installments;

305 (iii) for the sixth installment, 15% of the tax liability remaining after:

306 (A) making the calculation described in Subsection (4); and

307 (B) subtracting from the liability calculated in accordance with Subsection (4), the  
308 amount of tax paid in any previous installments;

309 (iv) for the seventh installment, 20% of the tax liability remaining after:

310 (A) making the calculation described in Subsection (4); and

311 (B) subtracting from the liability calculated in accordance with Subsection (4), the

312 amount of tax paid in any previous installments; and

313 (v) for the final installment, the balance of the tax liability remaining after:

314 (A) making the calculation described in Subsection (4); and

315 (B) subtracting from the liability calculated in accordance with Subsection (4), the  
316 amount of tax paid in any previous installments.

317 (b) A corporation may claim the tax credit described in Section 59-7-624 if the  
318 corporation paid the entire tax owed on deferred foreign income:

319 (i) as originally calculated; and

320 (ii) on or before the due date, including extensions, of the income tax return for the  
321 taxable year beginning on or before December 31, 2018.

322 Section 3. Section **59-7-624** is enacted to read:

323 **59-7-624. Refundable tax credit for deferred foreign income.**

324 (1) As used in this section:

325 (a) "Deferred foreign income" means income described in Section 965(a), Internal  
326 Revenue Code.

327 (b) "Originally calculated" means the calculation of state tax liability under this chapter  
328 on deferred foreign income:

329 (i) after making the subtractions described in Subsections 59-7-106(1)(k) and (3); and

330 (ii) without making the adjustments described in Subsection 59-7-118(4).

331 (c) "Qualifying corporation" means a corporation that:

332 (i) paid income tax:

333 (A) to the state;

334 (B) on deferred foreign income; and

335 (C) for a taxable year that began on or before December 31, 2017; and

336 (ii) has paid the entire tax owed on deferred foreign income:

337 (A) as originally calculated; and

338 (B) on or before the due date, including extensions, for the income tax return for the  
339 taxable year beginning on or before December 31, 2018.

340 (2) For the taxable year beginning on or after January 1, 2019, but beginning on or  
341 before December 31, 2019, a qualifying corporation may claim a refundable tax credit equal to  
342 the amount calculated by subtracting the amount calculated in Subsection 59-7-118(4)(a)(iii)

343 from the amount of the tax liability on deferred foreign income as originally calculated.

344 Section 4. Section **59-10-1112** is enacted to read:

345 **59-10-1112. Refundable tax credit for deferred foreign income.**

346 (1) As used in this section:

347 (a) "Deferred foreign income" means income described in Section 965(a), Internal  
348 Revenue Code.

349 (b) "Qualifying claimant, estate, or trust" means a claimant, estate, or trust that paid  
350 income tax:

351 (i) to the state;

352 (ii) on deferred foreign income; and

353 (iii) for a taxable year that began on or before December 31, 2017.

354 (c) "Qualifying deferred foreign income" means the amount calculated by multiplying:

355 (i) deferred foreign income; and

356 (ii) the difference between:

357 (A) 80%; and

358 (B) the percentage deduction allowed under Section 965(c), Internal Revenue Code.

359 (2) For the taxable year beginning on or after January 1, 2019, but beginning on or  
360 before December 31, 2019, a qualifying claimant, estate, or trust may claim a refundable tax  
361 credit equal the amount calculated by multiplying:

362 (a) the qualifying deferred foreign income; and

363 (b) 5%.

364 Section 5. **Uncodified Section 5, Laws of Utah 2018, Chapter 405, Retrospective**  
365 **operation.**

366 (1) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3), this bill has  
367 retrospective operation [~~beginning on January 1, 2018~~] for a taxable year beginning on or after  
368 January 1, 2017.

369 (2) The amendments to Sections 59-2-1208 and 59-2-1209 have retrospective  
370 operation to January 1, 2018.

371 [~~(2)~~] (3) The amendments to [Sections 59-7-118 and] Section 59-10-136 have  
372 retrospective operation for a taxable year beginning on or after January 1, 2018.

373 Section 6. **Effective date.**

374 If approved by two-thirds of all the members elected to each house, this bill takes effect  
375 upon approval by the governor, or the day following the constitutional time limit of Utah  
376 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
377 the date of veto override.

378 Section 7. **Retrospective operation.**

379 (1) Except as provided in Subsection (2), this bill has retrospective operation for a  
380 taxable year beginning on or after January 1, 2017.

381 (2) The amendments to the following sections have retrospective operation for a  
382 taxable year beginning on or after January 1, 2019:

383 (a) Section 59-7-118;

384 (b) Section 59-7-624; and

385 (c) Section 59-10-1112.