



# *Utah State Tax Commission v. See's Candies, Inc.*

2018 UT 57

## **OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL**

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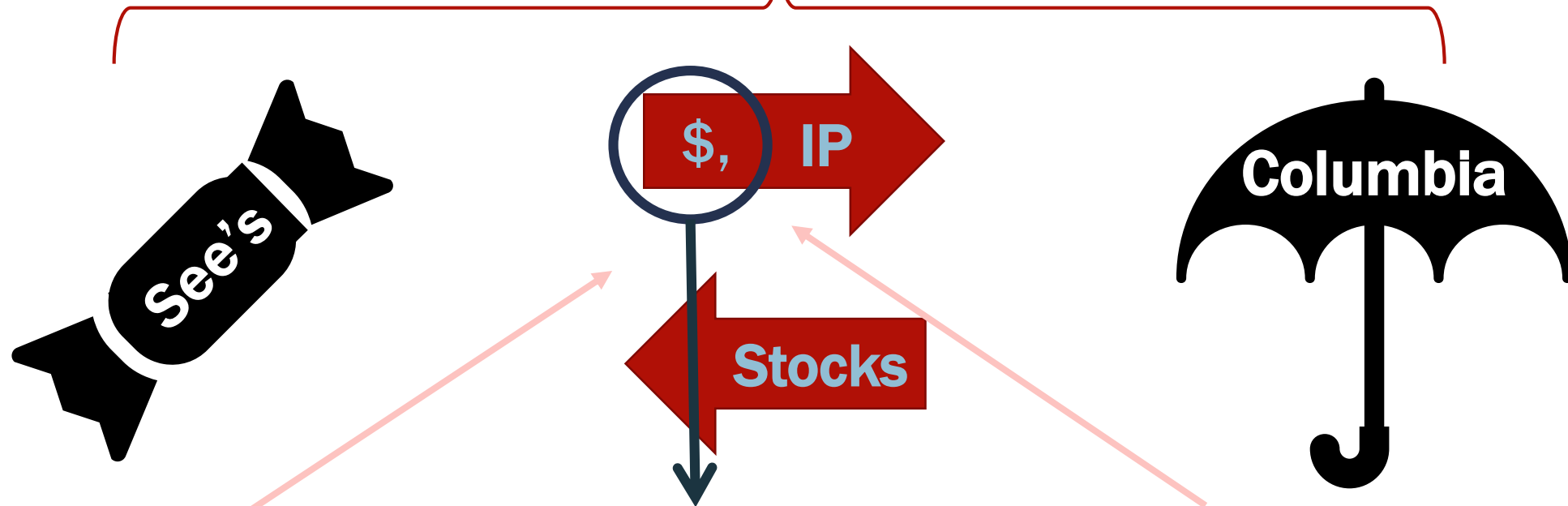
Revenue and Taxation Interim Committee

September 18, 2019



# Background

## Berkshire Hathaway



**Deducted royalty payments from state taxable income**

**Royalty payments for use of See's trademark**

**Exempt from state corporate income tax on royalty payments**



# Utah Code 59-7-113

If two or more corporations (whether or not organized or doing business in this state, and whether or not affiliated) are owned or controlled directly or indirectly by the same interests, the commission is authorized to distribute, apportion, or allocate gross income or deductions between or among such corporations, **if it determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such corporation.**



# Call to Action - ¶ 61

**“[T]he Legislature may decide to implement [mechanisms used by other states] in the future should it wish to prevent companies like See’s from receiving favorable tax treatment from transactions like the one at issue here.”**



# **2019 G.S. HB 268 (Rep. Waldrip)**

**Creates an add-back to the income of a corporation if:**

- The corporation makes payments, including royalty payments, to a captive insurance company;**
- The payments are for the corporation's use of an intangible asset owned by the captive insurance company;**
- The corporation and captive insurance company are related by common ownership; and**
- The corporation deducts these payments from income.**



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