

1 **CORPORATE TAX UNADJUSTED INCOME AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

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5 **LONG TITLE**

6 **General Description:**

7 This bill modifies defined terms related to corporate income taxes.

8 **Highlighted Provisions:**

9 This bill:

10 ▶ provides that a corporate taxpayer's unadjusted income is determined before any  
11 deductions related to:

- 12 • foreign-derived intangible income and global intangible low-taxed income; and
- 13 • deferred foreign income; and

14 ▶ makes technical and conforming 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 2020, Sixth Special Session, Chapter 15

22 **59-7-402**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 15

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

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

26 **59-7-101. Definitions.**

27 As used in this chapter:

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

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

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

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

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

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

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

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

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

47 (6) "Captive insurance company" means the same as that term is defined in Section  
48 31A-1-301.

49 (7) (a) "Captive real estate investment trust" means a real estate investment trust if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86 (iii) a foreign real estate investment trust.

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

89 (10) "Corporate return" or "return" includes a combined report.

90 (11) "Corporation" includes:

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

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

95 (12) "COVID-19" means:

96 (a) the severe acute respiratory syndrome coronavirus 2; or

97 (b) the disease caused by severe acute respiratory syndrome coronavirus 2.

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

101 (14) (a) "Doing business" includes any transaction in the course of business by a  
102 domestic corporation or by a foreign corporation qualified to do or doing business in this state.

103 (b) Except as provided in Subsection (14)(c) or Subsection 59-7-102(3), "doing  
104 business" includes:

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

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

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

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

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

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

114 (15) "Domestic corporation" means a corporation that is incorporated or organized  
115 under the laws of this state.

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

120 (17) (a) "Farmers' cooperative" means an association, corporation, or other  
121 organization that is:

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

123 (B) an association, corporation, or other organization that is similar to an association,  
124 corporation, or organization described in Subsection (17)(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 (17)(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 (17)(b)(ii), for purposes of this Subsection (17), 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 (17)(a)(i)(A).

141 (ii) The rules made under this Subsection (17)(b) shall be consistent with the filing  
142 requirements under federal law for a farmers' cooperative.

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

145 (19) (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 (20) (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 (21) "Income" includes losses.

188 (22) "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 (23) "Nonbusiness income" means the same as that term is defined in Section  
191 59-7-302.

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

194 (25) "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 (25), as the average amount of the asset  
199 producing the nonbusiness income bears to the average amount of all assets of the taxpayer  
200 within the taxable year.

201 (26) "S corporation" means an S corporation as defined in Section 1361, Internal  
202 Revenue Code.

203 (27) "Safe harbor lease" means a lease that qualified as a safe harbor lease under  
204 Section 168, Internal Revenue Code.

205 (28) "Special deduction" includes a deduction under:

206 (a) Section 250, Internal Revenue Code; or

207 (b) Section 965(c), Internal Revenue Code.

208 [~~28~~] (29) "State of the United States" includes any of the 50 states or the District of  
209 Columbia.

210 [~~29~~] (30) (a) "Taxable year" means the calendar year or the fiscal year ending during  
211 such calendar year upon the basis of which the adjusted income is computed.

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

215 [~~30~~] (31) "Taxpayer" means any corporation subject to the tax imposed by this  
216 chapter.

217 [~~31~~] (32) "Threshold level of business activity" means business activity in the United  
218 States equal to or greater than 20% of the corporation's total business activity as determined

219 under Section 59-7-401.

220 ~~[(32)]~~ (33) (a) "Unadjusted income" means federal taxable income as determined on a  
221 separate return basis before intercompany eliminations as determined by the Internal Revenue  
222 Code, before the net operating loss deduction and special deductions ~~[for dividends received]~~.

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

225 (c) "Unadjusted income" does not include income received from:

226 (i) a loan forgiven in accordance with 15 U.S.C. Sec. 636(a)(36), to the extent that a  
227 deduction for the expenditures paid with the loan is disallowed; or

228 (ii) a similar paycheck protection loan that is:

229 (A) authorized by the federal government;

230 (B) provided in response to COVID-19;

231 (C) forgiven if the borrower meets the expenditure requirements; and

232 (D) exempt from federal income tax, to the extent that a deduction for the expenditures  
233 paid with the loan is disallowed.

234 ~~[(33)]~~ (34) (a) "Unitary group" means a group of corporations that:

235 (i) are related through common ownership; and

236 (ii) by a preponderance of the evidence as determined by a court of competent  
237 jurisdiction or the commission, are economically interdependent with one another as  
238 demonstrated by the following factors:

239 (A) centralized management;

240 (B) functional integration; and

241 (C) economies of scale.

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

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

244 ~~[(34)]~~ (35) "United States" includes the 50 states and the District of Columbia.

245 ~~[(35)]~~ (36) "Utah net loss" means the current year Utah taxable income before Utah net  
246 loss deduction, if determined to be less than zero.

247 ~~[(36)]~~ (37) "Utah net loss deduction" means the amount of Utah net losses from other  
248 taxable years that a taxpayer may carry forward to the current taxable year in accordance with  
249 Section 59-7-110.



250           ~~[(37)]~~ (38) (a) "Utah taxable income" means Utah taxable income before net loss  
251 deduction less Utah net loss deduction.

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

255           ~~[(38)]~~ (39) "Utah taxable income before net loss deduction" means apportioned income  
256 plus nonbusiness income allocable to Utah net of related expenses.

257           ~~[(39)]~~ (40) (a) "Water's edge combined report" means a report combining the income  
258 and activities of:

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

260           (A) corporations organized or incorporated in the United States, including those  
261 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section  
262 936, Internal Revenue Code, in accordance with Subsection ~~[(39)]~~ (40)(b); and

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

265           (ii) an affiliated group electing to file a water's edge combined report under Subsection  
266 59-7-402(2).

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

270           ~~[(40)]~~ (41) "Worldwide combined report" means the combination of the income and  
271 activities of all members of a unitary group irrespective of the country in which the  
272 corporations are incorporated or conduct business activity.

273           Section 2. Section **59-7-402** is amended to read:

274           **59-7-402. Water's edge combined report.**

275           (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection  
276 59-7-101~~[(39)]~~(40)(a) is doing business in Utah, the unitary group shall file a water's edge  
277 combined report.

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

280           (i) doing business in Utah;

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

282 (iii) qualified, under Section 1501, Internal Revenue Code, to file a federal

283 consolidated return.

284 (b) Each corporation within the affiliated group that is doing business in Utah must

285 consent to filing a combined report. If an affiliated group elects to file a combined report, each

286 corporation within the affiliated group that is doing business in Utah must file a combined

287 report.

288 (c) Corporations that elect to file a water's edge combined report under this section may

289 not thereafter elect to file a separate return without the consent of the commission.

290 Section 3. **Retrospective operation.**

291 This bill has retrospective operation for:

292 (1) the last taxable year of a taxpayer beginning on or before December 31, 2017; and

293 (2) a taxable year beginning on or after January 1, 2018.