

Part 14

Pass-Through Entities and Pass-Through Entity Taxpayers Act

59-10-1401 Title.

This part is known as the "Pass-Through Entities and Pass-Through Entity Taxpayers Act."

Amended by Chapter 312, 2009 General Session

59-10-1402 Definitions.

As used in this part:

- (1) "Addition, subtraction, or adjustment" means:
 - (a) for a pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes:
 - (i) an addition to unadjusted income described in Section 59-7-105; or
 - (ii) a subtraction from unadjusted income described in Section 59-7-106;
 - (b) for a pass-through entity taxpayer that is classified as an individual, partnership, or S corporation for federal income tax purposes:
 - (i) an addition to or subtraction from adjusted gross income described in Section 59-10-114; or
 - (ii) an adjustment to adjusted gross income described in Section 59-10-115; or
 - (c) for a pass-through entity taxpayer that is classified as an estate or a trust for federal income tax purposes:
 - (i) an addition to or subtraction from unadjusted income described in Section 59-10-202; or
 - (ii) an adjustment to unadjusted income described in Section 59-10-209.1.
- (2) "Business income" means income arising from transactions and activity in the regular course of a pass-through entity's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the pass-through entity's regular trade or business operations.
- (3) "C corporation" means the same as that term is defined in Section 1361, Internal Revenue Code.
- (4) "Commercial domicile" means the principal place from which the trade or business of a business entity is directed or managed.
- (5) "Dependent beneficiary" means an individual who:
 - (a) is claimed as a dependent under Section 151, Internal Revenue Code, on another person's federal income tax return; and
 - (b) is a beneficiary of a trust that is a pass-through entity.
- (6) "Derived from or connected with Utah sources" means:
 - (a) if a pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part 3, Allocation and Apportionment of Income - Utah UDITPA Provisions; or
 - (b) if a pass-through entity or pass-through entity taxpayer is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, derived from or connected with Utah sources in accordance with Sections 59-10-117 and 59-10-118.
- (7)
 - (a) "Final pass-through entity taxpayer" means a pass-through entity taxpayer who is a resident or nonresident individual.
 - (b) "Final pass-through entity taxpayer" does not include:
 - (i) a resident or nonresident business entity; or

- (ii) a resident or nonresident estate or trust.
- (8) "Nonbusiness income" means all income of a pass-through entity other than business income.
- (9) "Nonresident business entity" means a business entity that does not have its commercial domicile in this state.
- (10) "Nonresident pass-through entity taxpayer" means a pass-through entity taxpayer that is a:
 - (a) nonresident individual; or
 - (b) nonresident business entity.
- (11) "Pass-through entity" means a business entity that is:
 - (a) the following if classified as a partnership for federal income tax purposes:
 - (i) a general partnership;
 - (ii) a limited liability company;
 - (iii) a limited liability partnership; or
 - (iv) a limited partnership;
 - (b) an S corporation;
 - (c) an estate or trust with respect to which the estate's or trust's income, gain, loss, deduction, or credit is divided among and passed through to one or more pass-through entity taxpayers; or
 - (d) a business entity similar to Subsections (11)(a) through (c):
 - (i) with respect to which the business entity's income, gain, loss, deduction, or credit is divided among and passed through to one or more pass-through entity taxpayers; and
 - (ii) as defined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (12) "Pass-through entity taxpayer" means a resident or nonresident individual, a resident or nonresident business entity, or a resident or nonresident estate or trust:
 - (a) that is:
 - (i) for a general partnership, a partner;
 - (ii) for a limited liability company, a member;
 - (iii) for a limited liability partnership, a partner;
 - (iv) for a limited partnership, a partner;
 - (v) for an S corporation, a shareholder;
 - (vi) for an estate or trust described in Subsection(11)(c), a beneficiary; or
 - (vii) for a business entity described in Subsection(11)(d), a member, partner, shareholder, or other title designated by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (b) to which the income, gain, loss, deduction, or credit of a pass-through entity is passed through.
- (13) "Resident business entity" means a business entity that is not a nonresident business entity.
- (14) "Resident pass-through entity taxpayer" means a pass-through entity taxpayer that is a:
 - (a) resident individual; or
 - (b) resident business entity.
- (15) "Return" means a return that a pass-through entity taxpayer files:
 - (a) for a pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or
 - (b) for a pass-through entity taxpayer that is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, under this chapter.
- (16) "S corporation" means the same as that term is defined in Section 1361, Internal Revenue Code.
- (17) "Share of income, gain, loss, deduction, or credit of a pass-through entity" means:
 - (a) for a pass-through entity except for a pass-through entity that is an S corporation:

- (i) for a resident pass-through entity taxpayer, the resident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through entity as determined under Section 704 et seq., Internal Revenue Code; and
- (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through entity:
 - (A) as determined under Section 704 et seq., Internal Revenue Code; and
 - (B) derived from or connected with Utah sources; or
- (b) for an S corporation:
 - (i) for a resident pass-through entity taxpayer, the resident pass-through entity taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation, as determined under Sec. 1366 et seq., Internal Revenue Code; or
 - (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation:
 - (A) as determined under Section 1366 et seq., Internal Revenue Code; and
 - (B) derived from or connected with Utah sources.
- (18) "Statement of dependent beneficiary income" means a statement:
 - (a) signed by the person who claims a dependent beneficiary as a dependent under Section 151, Internal Revenue Code, on the person's federal income tax return for the taxable year;
 - (b) attesting that the dependent is a dependent beneficiary; and
 - (c) indicating that the person expects that the dependent beneficiary's adjusted gross income for the taxable year will not exceed the basic standard deduction for the dependent beneficiary, as calculated under Section 63, Internal Revenue Code, for that taxable year.
- (19) "Voluntary taxable income" means the sum of a pass-through entity's income that is:
 - (a) attributed to a final pass-through entity taxpayer who is a resident individual unless the income is taxed by another state of the United States, the District of Columbia, or possession of the United States; and
 - (b)
 - (i) business income and nonbusiness income that is derived from or connected with Utah sources; and
 - (ii) attributed to a final pass-through entity taxpayer who is a nonresident individual.

Amended by Chapter 470, 2023 General Session

59-10-1403 Income tax treatment of a pass-through entity -- Returns -- Classification same as under Internal Revenue Code.

- (1) Subject to Subsection (3) and except as provided in Subsection 59-10-1403.2(2), a pass-through entity is not subject to a tax imposed by this chapter.
- (2) Except as provided in Section 59-10-1403.3, the income, gain, loss, deduction, or credit of a pass-through entity shall be passed through to one or more pass-through entity taxpayers as provided in this part.
- (3) A pass-through entity is subject to the return filing requirements of Sections 59-10-507, 59-10-514, and 59-10-516.
- (4) For purposes of taxation under this title, a pass-through entity that transacts business in the state shall be classified in the same manner as the pass-through entity is classified for federal income tax purposes.
- (5)

- (a) If a change is made in a pass-through entity's net income or loss on the pass-through entity's federal income tax return because of an action of the federal government, the pass-through entity shall file with the commission within 90 days after the date of a final determination of the action:
 - (i) a copy of the pass-through entity's amended federal income tax return or federal adjustment; and
 - (ii) an amended state income tax return that conforms with the changes made in the pass-through entity's amended federal income tax return.
- (b) If a change is made in a pass-through entity's net income on the pass-through entity's federal income tax return because the pass-through entity files an amended federal income tax return, the pass-through entity shall file with the commission, within 90 days after the date the taxpayer files the amended federal income tax return:
 - (i) a copy of the pass-through entity's amended federal income tax return; and
 - (ii) an amended state income tax return that conforms with the changes made in the pass-through entity's amended federal income tax return.

Amended by Chapter 470, 2023 General Session

59-10-1403.1 Income tax treatment of a pass-through entity taxpayer -- Return filing requirements.

- (1) Subject to the other provisions of this part, a pass-through entity taxpayer is subject to taxation:
 - (a) for a pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes:
 - (i) if that pass-through entity taxpayer is a resident pass-through entity taxpayer, as a domestic corporation is taxed under Chapter 7, Corporate Franchise and Income Taxes; or
 - (ii) if that pass-through entity taxpayer is a nonresident pass-through entity taxpayer, as a foreign corporation is taxed under Chapter 7, Corporate Franchise and Income Taxes; or
 - (b) for a pass-through entity taxpayer that is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes:
 - (i) if that pass-through entity taxpayer is a resident pass-through entity taxpayer, as a resident estate, resident individual, resident partnership, resident S corporation, or resident trust is taxed under this chapter; or
 - (ii) if that pass-through entity taxpayer is a nonresident pass-through entity taxpayer, as a nonresident estate, nonresident individual, nonresident partnership, nonresident S corporation, or nonresident trust is taxed under this chapter.
- (2) A pass-through entity taxpayer is subject to taxation on the pass-through entity taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity.
- (3)
 - (a) Subject to Subsection (3)(b)(iii), a resident pass-through entity taxpayer shall file a return:
 - (i) if the resident pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, as a domestic corporation under Chapter 7, Corporate Franchise and Income Taxes; or
 - (ii) if the resident pass-through entity taxpayer is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, as a resident estate, resident individual, resident partnership, resident S corporation, or resident trust under this chapter.
 - (b)
 - (i) Except as provided in Subsection (3)(b)(ii) and subject to Subsection (3)(b)(iii) or (iv), a nonresident pass-through entity taxpayer shall file a return:

- (A) if the nonresident pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, as a foreign corporation under Chapter 7, Corporate Franchise and Income Taxes; or
- (B) if the nonresident pass-through entity taxpayer is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, as a nonresident estate, nonresident individual, nonresident partnership, nonresident S corporation, or nonresident trust under this chapter.
- (ii) A nonresident pass-through entity taxpayer is not required to file a return if:
 - (A) the nonresident pass-through entity taxpayer does not have:
 - (I) for a nonresident pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes, unadjusted income as defined in Section 59-7-101 derived from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity;
 - (II) for a nonresident pass-through entity taxpayer that is classified as an individual, partnership, or S corporation for federal income tax purposes, adjusted gross income derived from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity; or
 - (III) for a nonresident pass-through entity taxpayer that is classified as an estate or a trust for federal income tax purposes, unadjusted income as defined in Section 59-10-103 derived from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity;
 - (B) the nonresident pass-through entity taxpayer does not seek to claim a tax credit allowed against a tax imposed under:
 - (I) Chapter 7, Corporate Franchise and Income Taxes; or
 - (II) this chapter;
 - (C) the pass-through entity pays or withholds a tax on behalf of the nonresident pass-through entity taxpayer and remits that tax to the commission:
 - (I) in accordance with Section 59-10-1403.2; and
 - (II) if a nonresident pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, in an amount that is equal to or greater than the minimum tax under Section 59-7-104; and
 - (D) the nonresident pass-through entity taxpayer is not a member of a unitary group as defined in Section 59-7-101 that is required to file a return in this state.
- (iii) A nonresident pass-through entity taxpayer that is not otherwise required to file a return under this Subsection (3) may file a return under:
 - (A) Chapter 7, Corporate Franchise and Income Taxes; or
 - (B) this chapter.
- (iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for a pass-through entity taxpayer, except for a pass-through entity taxpayer who is a resident individual, to file a return under this section if two or more pass-through entities pay or withhold a tax in accordance with Section 59-10-1403.2 on behalf of the pass-through entity taxpayer.

Enacted by Chapter 312, 2009 General Session

59-10-1403.2 Pass-through entity payment or withholding of tax on behalf of a pass-through entity taxpayer -- Exceptions to payment or withholding requirement -- Procedures and requirements -- Failure to pay or withhold a tax on behalf of a pass-through entity taxpayer.

- (1)
- (a) Except as provided in Subsections (1)(b) and (2), for a taxable year, a pass-through entity shall pay or withhold a tax:
 - (i) on:
 - (A) the business income of the pass-through entity; and
 - (B) the nonbusiness income of the pass-through entity derived from or connected with Utah sources; and
 - (ii) on behalf of a pass-through entity taxpayer.
 - (b) A pass-through entity is not required to pay or withhold a tax under Subsection (1)(a):
 - (i) on behalf of a final pass-through entity taxpayer who is a resident individual;
 - (ii) if the pass-through entity is an organization exempt from taxation under Subsection 59-7-102(1)(a);
 - (iii) if the pass-through entity:
 - (A) is a plan under Section 401, 408, or 457, Internal Revenue Code; and
 - (B) is not required to file a return under Chapter 7, Corporate Franchise and Income Taxes, or this chapter;
 - (iv) if the pass-through entity is a publicly traded partnership:
 - (A) as defined in Section 7704(b), Internal Revenue Code;
 - (B) that is classified as a partnership for federal income tax purposes; and
 - (C) that files an annual information return reporting the following with respect to each partner of the publicly traded partnership with income derived from or connected with Utah sources that exceeds \$500 in a taxable year:
 - (I) the partner's name;
 - (II) the partner's address;
 - (III) the partner's taxpayer identification number; and
 - (IV) other information required by the commission; or
 - (v) on behalf of a final pass-through entity taxpayer that is a nonresident individual if the pass-through entity pays the tax described in Subsection (2).
- (2)
- (a) For each taxable year that begins on or after January 1, 2022, but begins on or before December 31, 2025, a pass-through entity that is not a disregarded pass-through entity may elect to pay a tax in an amount equal to the product of:
 - (i) the percentage listed in Subsection 59-10-104(2); and
 - (ii) voluntary taxable income.
 - (b) A pass-through entity that elects to pay the tax in accordance with Subsection (2)(a) shall notify any final pass-through entity taxpayer of that election.
 - (c) A pass-through entity that pays a tax described in Subsection (2)(a) shall provide to each final pass-through entity taxpayer a statement that states:
 - (i) the amount of tax paid under Subsection (2)(a) on the income attributed to the final pass-through entity taxpayer; and
 - (ii) the amount of tax paid to another state by the pass-through entity on income:
 - (A) attributed to the final pass-through entity taxpayer; and
 - (B) that the commission determines is substantially similar to the tax under Subsection (2)(a).
 - (d) A payment of the tax described in Subsection (2)(a) on or before the last day of the taxable year:

- (i) is an irrevocable election to be subject to the tax for the taxable year; and
 - (ii) may not be refunded.
- (3)
- (a) Subject to Subsection (3)(b), the tax a pass-through entity shall pay or withhold on behalf of a pass-through entity taxpayer for a taxable year is an amount:
 - (i) determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) that the commission estimates will be sufficient to pay the tax liability of the pass-through entity taxpayer under this chapter with respect to the income described in Subsection (1)(a)(i) or (2)(a)(ii) of that pass-through entity for the taxable year.
 - (b) The rules the commission makes in accordance with Subsection (3)(a):
 - (i) except as provided in Subsection (3)(c):
 - (A) shall:
 - (I) for a pass-through entity except for a pass-through entity that is an S corporation, take into account items of income, gain, loss, deduction, and credit as analyzed on the schedule for reporting partners' distributive share items as part of the federal income tax return for the pass-through entity; or
 - (II) for a pass-through entity that is an S corporation, take into account items of income, gain, loss, deduction, and credit as reconciled on the schedule for reporting shareholders' pro rata share items as part of the federal income tax return for the pass-through entity; and
 - (B) notwithstanding Subsection (3)(b)(ii)(D), take into account the refundable tax credit provided in Section 59-6-102; and
 - (ii) may not take into account the following items if taking those items into account does not result in an accurate estimate of a pass-through entity taxpayer's tax liability under this chapter for the taxable year:
 - (A) a capital loss;
 - (B) a passive loss;
 - (C) another item of deduction or loss if that item of deduction or loss is generally subject to significant reduction or limitation in calculating:
 - (I) for a pass-through entity taxpayer that is classified as a C corporation for federal income tax purposes, unadjusted income as defined in Section 59-7-101;
 - (II) for a pass-through entity that is classified as an individual, partnership, or S corporation for federal income tax purposes, adjusted gross income; or
 - (III) for a pass-through entity that is classified as an estate or a trust for federal income tax purposes, unadjusted income as defined in Section 59-10-103; or
 - (D) a tax credit allowed against a tax imposed under:
 - (I) Chapter 7, Corporate Franchise and Income Taxes; or
 - (II) this chapter.
 - (c) The rules the commission makes in accordance with Subsection (3)(a) may establish a method for taking into account items of income, gain, loss, deduction, or credit of a pass-through entity if:
 - (i) for a pass-through entity except for a pass-through entity that is an S corporation, the pass-through entity does not analyze the items of income, gain, loss, deduction, or credit on the schedule for reporting partners' distributive share items as part of the federal income tax return for the pass-through entity; or
 - (ii) for a pass-through entity that is an S corporation, the pass-through entity does not reconcile the items of income, gain, loss, deduction, or credit on the schedule for reporting

shareholders' pro rata share items as part of the federal income tax return for the pass-through entity.

- (4)
- (a) Except as provided in Subsection (4)(b), a pass-through entity shall remit to the commission the tax the pass-through entity pays or withholds on behalf of a pass-through entity taxpayer under this section:
 - (i) on or before the due date of the pass-through entity's return, not including extensions; and
 - (ii) on a form provided by the commission.
 - (b) A pass-through entity shall remit the tax described in Subsection (2) on or before the last day of the pass-through entity's taxable year.
 - (c) The commission shall consider only the amount of tax remitted as provided in Subsection (4)(b), on or before the last day of the pass-through entity's taxable year as a payment described in Subsection (2).
 - (d) Except as provided in Subsection (1)(b), a pass-through entity that files an amended return under this part shall pay or withhold tax on any increase in the income described in Subsection (1)(a)(i) on behalf of the pass-through entity taxpayer and remit that tax to the commission.
- (5) A pass-through entity shall provide a statement to a pass-through entity taxpayer on behalf of whom the pass-through entity pays or withholds a tax under this section showing the amount of tax the pass-through entity pays or withholds under this section for the taxable year on behalf of the pass-through entity taxpayer.
- (6) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not collect an amount under this section for a taxable year from a pass-through entity and shall waive any penalty and interest on that amount if:
- (a) the pass-through entity fails to pay or withhold the tax on the amount as required by this section on behalf of the pass-through entity taxpayer;
 - (b) the pass-through entity taxpayer:
 - (i) files a return on or before the due date for filing the pass-through entity's return, including extensions; and
 - (ii) on or before the due date including extensions described in Subsection (6)(b)(i), pays the tax on the amount for the taxable year:
 - (A) if the pass-through entity taxpayer is classified as a C corporation for federal income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or
 - (B) if the pass-through entity taxpayer is classified as an estate, individual, partnership, S corporation, or a trust for federal income tax purposes, under this chapter; and
 - (c) the pass-through entity applies to the commission.
- (7) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not collect an amount under this section for a taxable year from a pass-through entity that is a trust and shall waive any penalty and interest on that amount if:
- (a) the pass-through entity fails to pay or withhold the tax on the amount as required by this section on behalf of a dependent beneficiary;
 - (b) the pass-through entity applies to the commission; and
 - (c)
 - (i) the dependent beneficiary complies with the requirements of Subsection (6)(b); or
 - (ii)
 - (A) the dependent beneficiary's adjusted gross income for the taxable year does not exceed the basic standard deduction for the dependent beneficiary, as calculated under Section 63, Internal Revenue Code, for that taxable year; and

- (B) the trustee of the trust retains a statement of dependent beneficiary income on behalf of the dependent beneficiary.
- (8) If a pass-through entity would have otherwise qualified for a waiver of a penalty and interest under Subsection (7), except that the trustee of a trust has not applied to the commission as required by Subsection (7)(b) or retained the statement of dependent beneficiary income required by Subsection (7)(c)(ii)(B), it is a rebuttable presumption in an audit that the pass-through entity would have otherwise qualified for the waiver of the penalty and interest under Subsection (7).

Amended by Chapter 470, 2023 General Session

59-10-1403.3 Refund of amounts paid or withheld for a pass-through entity.

- (1) As used in this section:
 - (a) "Committee" means the Revenue and Taxation Interim Committee.
 - (b) "Qualifying excess withholding" means an amount that:
 - (i) is paid or withheld:
 - (A) by a pass-through entity that has a different taxable year than the pass-through entity that requests a refund under this section; and
 - (B) on behalf of the pass-through entity that requests the refund, if the pass-through entity that requests the refund also is a pass-through entity taxpayer; and
 - (ii) is equal to the difference between:
 - (A) the amount paid or withheld for the taxable year on behalf of the pass-through entity that requests the refund; and
 - (B) the product of the percentage listed in Subsection 59-10-104(2) and the income, described in Subsection 59-10-1403.2(1)(a)(i), of the pass-through entity that requests the refund.
- (2) For a taxable year ending on or after July 1, 2017, a pass-through entity may claim a refund of qualifying excess withholding, if the amount of the qualifying excess withholding is equal to or greater than \$250,000.
- (3) A pass-through entity that requests a refund of qualifying excess withholding under this section shall:
 - (a) apply to the commission for a refund on or, subject to Subsection (4), after the day on which the pass-through entity files the pass-through entity's income tax return; and
 - (b) provide any information that the commission may require to determine that the pass-through entity is eligible to receive the refund.
- (4) A pass-through entity shall claim a refund of qualifying excess withholding under this section within 30 days after the earlier of the day on which:
 - (a) the pass-through entity files an income tax return; or
 - (b) the pass-through entity's income tax return is due, including any extension of due date authorized in statute.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules establishing the information that a pass-through entity shall provide to the commission to obtain a refund of qualifying excess withholding under this section.
- (6)
 - (a) On or before November 30, 2018, the committee shall review the \$250,000 threshold described in Subsection (2) for the purpose of assessing whether the threshold amount should be maintained, increased, or decreased.

- (b) To assist the committee in conducting the review described in Subsection (6)(a), the commission shall provide the committee with:
 - (i) the total number of refund requests made under this section;
 - (ii) the total costs of any refunds issued under this section;
 - (iii) the costs of any audits conducted on refund requests made under this section; and
 - (iv) an estimation of:
 - (A) the number of refund requests the commission expects to receive if the Legislature increases the threshold;
 - (B) the number of refund requests the commission expects to receive if the Legislature decreases the threshold; and
 - (C) the costs of any audits the commission would conduct if the Legislature increases or decreases the threshold.

Amended by Chapter 367, 2021 General Session

59-10-1404 Character of an item of income, gain, loss, deduction, or credit.

Regardless of whether or how an item of income, gain, loss, deduction, or credit is characterized for federal income tax purposes, that item of income, gain, loss, deduction, or credit is from the same source and incurred in the same manner for a pass-through entity taxpayer as if the item of income, gain, loss, deduction, or credit is:

- (1) realized directly from the source from which the item of income, gain, loss, deduction, or credit is realized by the pass-through entity; or
- (2) incurred in the same manner as incurred by the pass-through entity.

Amended by Chapter 312, 2009 General Session

59-10-1404.5 Resident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit of a pass-through entity.

- (1) In determining the taxable income of a resident pass-through entity taxpayer, an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit of a pass-through entity shall be made in accordance with this section.
- (2) For a resident pass-through entity taxpayer of a pass-through entity except for a pass-through entity that is an S corporation, the resident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit is:
 - (a) if the item of income, gain, loss, deduction, or credit is required to be taken into account separately for federal income tax purposes, the resident pass-through entity taxpayer's distributive share of the item of income, gain, loss, deduction, or credit:
 - (i) for federal income tax purposes; and
 - (ii) determined under Section 704 et seq., Internal Revenue Code; or
 - (b) if the item of income, gain, loss, deduction, or credit is not required to be taken into account separately for federal income tax purposes, determined in accordance with the resident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit:
 - (i) relating to the pass-through entity generally;
 - (ii) for federal income tax purposes; and
 - (iii) under Section 704 et seq., Internal Revenue Code.

- (3) For a resident pass-through entity taxpayer of a pass-through entity that is an S corporation, the resident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit is:
- (a) if the item of income, gain, loss, deduction, or credit is required to be taken into account separately for federal income tax purposes, the resident pass-through entity taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:
 - (i) for federal income tax purposes; and
 - (ii) determined under Section 1366 et seq., Internal Revenue Code; or
 - (b) if the item of income, gain, loss, deduction, or credit is not required to be taken into account separately for federal income tax purposes, determined in accordance with the resident pass-through entity taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:
 - (i) relating to the pass-through entity generally;
 - (ii) for federal income tax purposes; and
 - (iii) under Section 1366 et seq., Internal Revenue Code.

Enacted by Chapter 312, 2009 General Session

59-10-1405 Nonresident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit of a pass-through entity -- In determining source of nonresident pass-through entity taxpayer's income certain provisions of pass-through entity agreement may not be considered -- Rulemaking authority.

- (1)
- (a) Except as provided in Subsection (3), in determining the taxable income of a nonresident pass-through entity taxpayer, an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit of a pass-through entity shall be made in accordance with this Subsection (1).
 - (b) For a nonresident pass-through entity taxpayer of a pass-through entity except for a pass-through entity that is an S corporation, the nonresident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit is:
 - (i) if the item of income, gain, loss, deduction, or credit is required to be taken into account separately for federal income tax purposes, the nonresident pass-through entity taxpayer's distributive share of the item of income, gain, loss, deduction, or credit:
 - (A) for federal income tax purposes;
 - (B) determined under Section 704 et seq., Internal Revenue Code; and
 - (C) derived from or connected with Utah sources; or
 - (ii) if the item of income, gain, loss, deduction, or credit is not required to be taken into account separately for federal income tax purposes, determined in accordance with the nonresident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or credit:
 - (A) relating to the pass-through entity generally;
 - (B) for federal income tax purposes;
 - (C) under Section 704 et seq., Internal Revenue Code; and
 - (D) derived from or connected with Utah sources.
 - (c) For a nonresident pass-through entity taxpayer of a pass-through entity that is an S corporation, the nonresident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit is:

- (i) if the item of income, gain, loss, deduction, or credit is required to be taken into account separately for federal income tax purposes, the nonresident pass-through entity taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:
 - (A) for federal income tax purposes;
 - (B) determined under Section 1366 et seq., Internal Revenue Code; and
 - (C) derived from or connected with Utah sources; or
 - (ii) if the item of income, gain, loss, deduction, or credit is not required to be taken into account separately for federal income tax purposes, determined in accordance with the nonresident pass-through entity taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:
 - (A) relating to the pass-through entity generally;
 - (B) for federal income tax purposes;
 - (C) under Section 1366 et seq., Internal Revenue Code; and
 - (D) derived from or connected with Utah sources.
- (2) In determining the source of a nonresident pass-through entity taxpayer's income, the following provisions in a pass-through entity agreement may not be considered:
- (a) a provision that allocates to the nonresident pass-through entity taxpayer, as income, gain, or credit from a source outside this state, a greater proportion of the nonresident pass-through entity taxpayer's share of income, gain, or credit of the pass-through entity than the ratio of income, gain, or credit of the pass-through entity from sources outside this state to income, gain, or credit of the pass-through entity from all sources; or
 - (b) a provision that allocates to the nonresident pass-through entity taxpayer a greater proportion of an item of loss or deduction of the pass-through entity derived from or connected with Utah sources than the taxpayer's share of loss or deduction generally:
 - (i) relating to the pass-through entity; and
 - (ii) for federal income tax purposes.
- (3) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, authorize the use of a calculation other than the calculation provided in Subsection (1), for determining a nonresident pass-through entity taxpayer's share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or credit of a pass-through entity derived from or connected with Utah sources if:
- (a) the nonresident pass-through entity taxpayer applies to the commission; and
 - (b) the commission finds that the use of the calculation is appropriate and equitable.

Amended by Chapter 312, 2009 General Session