

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