

## Part 1 Corporate Tax Generally

### 59-7-101 Definitions.

As used in this chapter:

- (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and 59-7-106.
- (2)
  - (a) "Affiliated group" means one or more chains of corporations that are connected through stock ownership with a common parent corporation that meet the following requirements:
    - (i) at least 80% of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and
    - (ii) the common parent directly owns at least 80% of the stock of at least one of the corporations in the group.
  - (b) "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state.
  - (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which is limited and preferred as to dividends.
- (3) "Apportionable income" means adjusted income less nonbusiness income net of related expenses, to the extent included in adjusted income.
- (4) "Apportioned income" means apportionable income multiplied by the apportionment fraction as determined in Section 59-7-311.
- (5) "Business income" means the same as that term is defined in Section 59-7-302.
- (6) "Captive insurance company" means the same as that term is defined in Section 31A-1-301.
- (7)
  - (a) "Captive real estate investment trust" means a real estate investment trust if:
    - (i) the shares or beneficial interests of the real estate investment trust are not regularly traded on an established securities market; and
    - (ii) more than 50% of the voting power or value of the shares or beneficial interests of the real estate investment trust are directly, indirectly, or constructively:
      - (A) owned by a controlling entity of the real estate investment trust; or
      - (B) controlled by a controlling entity of the real estate investment trust.
  - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."
- (8)
  - (a) "Common ownership" means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of:
    - (i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue Code, except that 50% shall be substituted for 80%;
    - (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue Code; or
    - (iii) three or more corporations each of which is a member of a group of corporations described in Subsection (2)(a)(i) or (ii), and one of which is:
      - (A) a common parent corporation included in a group of corporations described in Subsection (2)(a)(i); and
      - (B) included in a group of corporations described in Subsection (2)(a)(ii).
  - (b) Ownership of outstanding voting stock shall be determined by Section 1563, Internal Revenue Code.
- (9)

- (a) "Controlling entity of a captive real estate investment trust" means an entity that:
  - (i) is treated as an association taxable as a corporation under the Internal Revenue Code;
  - (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue Code;
  - and
  - (iii) directly, indirectly, or constructively holds more than 50% of:
    - (A) the voting power of a captive real estate investment trust; or
    - (B) the value of the shares or beneficial interests of a captive real estate investment trust.
- (b) "Controlling entity of a captive real estate investment trust" does not include:
  - (i) a real estate investment trust, except for a captive real estate investment trust;
  - (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real estate investment trust; or
  - (iii) a foreign real estate investment trust.
- (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."
- (10) "Corporate return" or "return" includes a combined report.
- (11) "Corporation" includes:
  - (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue Code; and
  - (b) other organizations that are taxed as corporations for federal income tax purposes under the Internal Revenue Code.
- (12) "COVID-19" means:
  - (a) the severe acute respiratory syndrome coronavirus 2; or
  - (b) the disease caused by severe acute respiratory syndrome coronavirus 2.
- (13) "Dividend" means any distribution, including money or other type of property, made by a corporation to its shareholders out of its earnings or profits accumulated after December 31, 1930.
- (14)
  - (a) "Doing business" includes any transaction in the course of business by a domestic corporation or by a foreign corporation qualified to do or doing business in this state.
  - (b) Except as provided in Subsection (14)(c) or Subsection 59-7-102(3), "doing business" includes:
    - (i) the right to do business through incorporation or qualification;
    - (ii) owning, renting, or leasing of real or personal property within this state;
    - (iii) the participation in joint ventures, working and operating agreements, the performance of which takes place in this state;
    - (iv) selling or performing a service in this state; and
    - (v) earning income from the use of intangible property in this state.
  - (c) "Doing business" does not include the business activity of a corporation if the corporation's only business activity within the state is the solicitation of orders for sales of tangible personal property that are protected under 15 U.S.C. Secs. 381 through 384.
- (15) "Domestic corporation" means a corporation that is incorporated or organized under the laws of this state.
- (16) "Exercising a corporate franchise" does not include the business activity of a corporation if the corporation's only business activity within the state is the solicitation of orders for sales of tangible personal property that are protected under 15 U.S.C. Secs. 381 through 384.
- (17)
  - (a) "Farmers' cooperative" means an association, corporation, or other organization that is:

- (i)
  - (A) an association, corporation, or other organization of farmers or fruit growers; or
  - (B) an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (17)(a)(i)(A); and
- (ii) organized and operated on a cooperative basis to:
  - (A)
    - (I) market the products of members of the cooperative or the products of other producers; and
    - (II) return to the members of the cooperative or other producers the proceeds of sales less necessary marketing expenses on the basis of the quantity of the products of a member or producer or the value of the products of a member or producer; or
  - (B)
    - (I) purchase supplies and equipment for the use of members of the cooperative or other persons; and
    - (II) turn over the supplies and equipment described in Subsection (17)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or other persons.
- (b)
  - (i) Subject to Subsection (17)(b)(ii), for purposes of this Subsection (17), the commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define:
    - (A) the terms "member" and "producer"; and
    - (B) what constitutes an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (17)(a)(i)(A).
  - (ii) The rules made under this Subsection (17)(b) shall be consistent with the filing requirements under federal law for a farmers' cooperative.
- (18) "Foreign corporation" means a corporation that is not incorporated or organized under the laws of this state.
- (19)
  - (a) "Foreign operating company" means a corporation that:
    - (i) is incorporated in the United States;
    - (ii) conducts at least 80% of the corporation's business activity, as determined under Section 59-7-401, outside the United States; and
    - (iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income - Utah UDITPA Provisions, has:
      - (A) at least \$1,000,000 of payroll located outside the United States; and
      - (B) at least \$2,000,000 of property located outside the United States.
  - (b) "Foreign operating company" does not include a corporation that qualifies for the Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.
- (20)
  - (a) "Foreign real estate investment trust" means:
    - (i) a business entity organized outside the laws of the United States if:
      - (A) at least 75% of the business entity's total asset value at the close of the business entity's taxable year is represented by:
        - (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;
        - (II) cash or cash equivalents; or
        - (III) one or more securities issued or guaranteed by the United States;
      - (B) the business entity is:
        - (I) not subject to income taxation:

- (Aa) on amounts distributed to the business entity's beneficial owners; and
- (Bb) in the jurisdiction in which the business entity is organized; or
- (II) exempt from income taxation on an entity level in the jurisdiction in which the business entity is organized;
- (C) the business entity distributes at least 85% of the business entity's taxable income, as computed in the jurisdiction in which the business entity is organized, to the holders of the business entity's:
  - (I) shares or beneficial interests; and
  - (II) on an annual basis;
- (D)
  - (I) not more than 10% of the following is held directly, indirectly, or constructively by a single person:
    - (Aa) the voting power of the business entity; or
    - (Bb) the value of the shares or beneficial interests of the business entity; or
  - (II) the shares of the business entity are regularly traded on an established securities market; and
- (E) the business entity is organized in a country that has a tax treaty with the United States; or
- (ii) a listed Australian property trust.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining:
  - (i) "cash or cash equivalents";
  - (ii) "established securities market"; or
  - (iii) "listed Australian property trust."
- (21) "Income" includes losses.
- (22) "Internal Revenue Code" means Title 26 of the United States Code as effective during the year in which Utah taxable income is determined.
- (23) "Nonbusiness income" means the same as that term is defined in Section 59-7-302.
- (24) "Real estate investment trust" means the same as that term is defined in Section 856, Internal Revenue Code.
- (25) "Related expenses" means:
  - (a) expenses directly attributable to nonbusiness income; and
  - (b) the portion of interest or other expense indirectly attributable to both nonbusiness and business income that bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection (25), as the average amount of the asset producing the nonbusiness income bears to the average amount of all assets of the taxpayer within the taxable year.
- (26) "S corporation" means an S corporation as defined in Section 1361, Internal Revenue Code.
- (27) "Safe harbor lease" means a lease that qualified as a safe harbor lease under Section 168, Internal Revenue Code.
- (28) "Special deduction" includes a deduction under:
  - (a) Section 250, Internal Revenue Code; or
  - (b) Section 965(c), Internal Revenue Code.
- (29) "State of the United States" includes any of the 50 states or the District of Columbia.
- (30)
  - (a) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the adjusted income is computed.

- (b) In the case of a return made for a fractional part of a year under this chapter or under rules prescribed by the commission, "taxable year" includes the period for which such return is made.
- (31) "Taxpayer" means any corporation subject to the tax imposed by this chapter.
- (32) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Section 59-7-401.
- (33)
  - (a) "Unadjusted income" means federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions.
  - (b) "Unadjusted income" includes deferred foreign income described in Section 965(a), Internal Revenue Code.
  - (c) "Unadjusted income" does not include income received from:
    - (i) a loan forgiven in accordance with 15 U.S.C. Sec. 636(a)(36), to the extent that a deduction for the expenditures paid with the loan is disallowed; or
    - (ii) a similar paycheck protection loan that is:
      - (A) authorized by the federal government;
      - (B) provided in response to COVID-19;
      - (C) forgiven if the borrower meets the expenditure requirements; and
      - (D) exempt from federal income tax, to the extent that a deduction for the expenditures paid with the loan is disallowed.
- (34)
  - (a) "Unitary group" means a group of corporations that:
    - (i) are related through common ownership; and
    - (ii) by a preponderance of the evidence as determined by a court of competent jurisdiction or the commission, are economically interdependent with one another as demonstrated by the following factors:
      - (A) centralized management;
      - (B) functional integration; and
      - (C) economies of scale.
  - (b) "Unitary group" includes a captive real estate investment trust.
  - (c) "Unitary group" does not include an S corporation.
- (35) "United States" includes the 50 states and the District of Columbia.
- (36) "Utah net loss" means the current year Utah taxable income before Utah net loss deduction, if determined to be less than zero.
- (37) "Utah net loss deduction" means the amount of Utah net losses from other taxable years that a taxpayer may carry forward to the current taxable year in accordance with Section 59-7-110.
- (38)
  - (a) "Utah taxable income" means Utah taxable income before net loss deduction less Utah net loss deduction.
  - (b) "Utah taxable income" includes income from tangible or intangible property located or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.
- (39) "Utah taxable income before net loss deduction" means apportioned income plus nonbusiness income allocable to Utah net of related expenses.
- (40)
  - (a) "Water's edge combined report" means a report combining the income and activities of:

- (i) all members of a unitary group that are:
  - (A) corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code, in accordance with Subsection (40)(b); and
  - (B) corporations organized or incorporated outside of the United States meeting the threshold level of business activity; and
- (ii) an affiliated group electing to file a water's edge combined report under Subsection 59-7-402(2).
- (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a unitary group.
- (41) "Worldwide combined report" means the combination of the income and activities of all members of a unitary group irrespective of the country in which the corporations are incorporated or conduct business activity.

Amended by Chapter 368, 2021 General Session

**59-7-102 Exemptions.**

- (1) Except as provided in this section, the following are exempt from a tax under this chapter:
  - (a) an organization exempt under Section 501, Internal Revenue Code;
  - (b) an organization exempt under Section 528, Internal Revenue Code;
  - (c) an insurance company that is subject to taxation on the insurance company's premiums under Chapter 9, Taxation of Admitted Insurers, regardless of whether the insurance company has a tax liability under that chapter;
  - (d) a local building authority as defined in Section 17D-2-102;
  - (e) a farmers' cooperative;
  - (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an ownership interest in:
    - (i) a project, as defined in Section 11-13-103; or
    - (ii) facilities providing additional project capacity, as defined in Section 11-13-103;
  - (g) an insurance company that engages in a transaction that is subject to taxation under Section 31A-3-301 or 31A-3-302, regardless of whether the insurance company has a tax liability under that section; or
  - (h) a captive insurance company that pays a fee under Section 31A-3-304.
- (2) A corporation is exempt from a tax under this chapter:
  - (a) if the corporation is an out-of-state business as defined in Section 53-2a-1202; and
  - (b) for income earned:
    - (i) during a disaster period as defined in Section 53-2a-1202; and
    - (ii) for the purpose of responding to a declared state disaster or emergency as defined in Section 53-2a-1202.
- (3) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a person not otherwise subject to the tax imposed by this chapter or Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, is not subject to a tax imposed by Section 59-7-104, 59-7-201, 59-7-701, or 59-8-104, because of:
  - (a) that person's ownership of tangible personal property located at the premises of a printer's facility in this state with which the person has contracted for printing; or
  - (b) the activities of the person's employees or agents who are:

- (i) located solely at the premises of a printer's facility; and
  - (ii) performing services:
    - (A) related to:
      - (I) quality control;
      - (II) distribution; or
      - (III) printing services; and
    - (B) performed by the printer's facility in this state with which the person has contracted for printing.
- (4) Notwithstanding Subsection (1), an organization, company, authority, farmers' cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part 8, Unrelated Business Income, to the extent provided in Part 8, Unrelated Business Income.
- (5) Notwithstanding Subsection (1)(b), to the extent the income of an organization described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal Revenue Code, the organization's income is also taxable under this chapter.

Amended by Chapter 168, 2017 General Session

**59-7-103 Chapter applicable to receivers, trustees in bankruptcy and assignees.**

Unless otherwise provided in this chapter, receivers, trustees in bankruptcy, and assignees for creditors required to make returns under this chapter shall be subject to the provisions of this chapter.

Repealed and Re-enacted by Chapter 169, 1993 General Session

**59-7-104 Tax -- Minimum tax.**

- (1) Each domestic and foreign corporation, except a corporation that is exempt under Section 59-7-102, shall pay an annual tax to the state based on the corporation's Utah taxable income for the taxable year for the privilege of exercising the corporation's corporate franchise or for the privilege of doing business in the state.
- (2) The tax shall be 4.65% of a corporation's Utah taxable income.
- (3) The minimum tax a corporation shall pay under this chapter is \$100.

Amended by Chapter 459, 2023 General Session

**59-7-105 Additions to unadjusted income.**

- In computing adjusted income the following amounts shall be added to unadjusted income:
- (1) interest from bonds, notes, and other evidences of indebtedness issued by any state of the United States, including any agency and instrumentality of a state of the United States;
  - (2) the amount of any deduction taken on a corporation's federal return for taxes paid by a corporation:
    - (a) to Utah for taxes imposed by this chapter; and
    - (b) to another state of the United States, a foreign country, a United States possession, or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or exercising its corporate franchise, including income, franchise, corporate stock and business and occupation taxes;
  - (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and (2)(a);
  - (4) capital losses that have been deducted on a Utah corporate return in previous years;
  - (5) any deduction on the federal return that has been previously deducted on the Utah return;

- (6) charitable contributions, to the extent deducted on the federal return when determining federal taxable income;
- (7) the amount of gain or loss determined under Section 59-7-114 relating to a target corporation under Section 338, Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;
- (8) the amount of gain or loss determined under Section 59-7-115 relating to corporations treated for federal purposes as having disposed of its assets under Section 336(e), Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;
- (9) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed under Section 59-7-107;
- (10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a corporation that is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the corporation that is the account owner:
  - (a) is not expended for:
    - (i) higher education costs as defined in Section 53B-8a-102.5; or
    - (ii) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and
  - (b) is subtracted by the corporation:
    - (i) that is the account owner; and
    - (ii) in accordance with Subsection 59-7-106(1)(r);
- (11) the amount of the deduction for dividends paid, as defined in Section 561, Internal Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in computing the taxable income of a captive real estate investment trust, if that captive real estate investment trust is subject to federal income taxation; and
- (12) any deduction on a return filed under this chapter for a royalty or other expense that a corporation pays to an entity related by common ownership for the use of an intangible asset where the intangible asset is owned by the entity related by common ownership unless the corporation can demonstrate to the satisfaction of the commission or a court on judicial review in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review, that:
  - (a) for the same taxable year, the entity related by common ownership is subject to income taxes on the royalty or other expense:
    - (i) under this chapter;
    - (ii) under the laws of another state; or
    - (iii) by a foreign government that has in force an income tax treaty with the United States; or
  - (b) if Subsection (12)(a) does not apply, the corporation paying the royalty or other expenses never owned the intangible asset.

Amended by Chapter 184, 2020 General Session

**59-7-106 Subtractions from unadjusted income.**

- (1) In computing adjusted income, the following amounts shall be subtracted from unadjusted income:
  - (a) the foreign dividend gross-up included in gross income for federal income tax purposes under Section 78, Internal Revenue Code;



- (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct the net capital loss on the return filed under this chapter for the taxable year for which the net capital loss is incurred;
- (c) the decrease in salary expense deduction for federal income tax purposes due to claiming the federal work opportunity credit under Section 51, Internal Revenue Code;
- (d) the decrease in qualified research and basic research expense deduction for federal income tax purposes due to claiming the federal credit for increasing research activities under Section 41, Internal Revenue Code;
- (e) the decrease in qualified clinical testing expense deduction for federal income tax purposes due to claiming the federal credit for clinical testing expenses for certain drugs for rare diseases or conditions under Section 45C, Internal Revenue Code;
- (f) any decrease in any expense deduction for federal income tax purposes due to claiming any other federal credit;
- (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and (2)(b);
- (h) any income on the federal corporation income tax return that has been previously taxed by Utah;
- (i) an amount included in federal taxable income that is due to a refund of a tax, including a franchise tax, an income tax, a corporate stock and business tax, or an occupation tax:
  - (i) if that tax is imposed for the privilege of:
    - (A) doing business; or
    - (B) exercising a corporate franchise;
  - (ii) if that tax is paid by the corporation to:
    - (A) Utah;
    - (B) another state of the United States;
    - (C) a foreign country;
    - (D) a United States possession; or
    - (E) the Commonwealth of Puerto Rico; and
  - (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;
- (j) a charitable contribution, to the extent the charitable contribution is allowed as a subtraction under Section 59-7-109;
- (k) subject to Subsection (3), 50% of a dividend considered to be received or received from a subsidiary that:
  - (i) is a member of the unitary group;
  - (ii) is organized or incorporated outside of the United States; and
  - (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;
- (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a foreign operating company;
- (m) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, if an election has been made in accordance with Section 338(h)(10), Internal Revenue Code;
- (n) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal Revenue Code, has been made for federal purposes;
- (o) subject to Subsection (5), an adjustment to the following due to a difference between basis for federal purposes and basis as computed under Section 59-7-107:
  - (i) an amortization expense;

- (ii) a depreciation expense;
  - (iii) a gain;
  - (iv) a loss; or
  - (v) an item similar to Subsections (1)(o)(i) through (iv);
  - (p) an interest expense that is not deducted on a federal corporation income tax return under Section 265(b) or 291(e), Internal Revenue Code;
  - (q) 100% of dividends received from a subsidiary that is an insurance company if that subsidiary that is an insurance company is:
    - (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
    - (ii) under common ownership;
  - (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section 53B-8a-102.5:
    - (i) that the corporation or a person other than the corporation makes into an account owned by the corporation during the taxable year;
    - (ii) to the extent that neither the corporation nor the person other than the corporation described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax return; and
    - (iii) to the extent the qualified investment does not exceed the maximum amount of the qualified investment that may be subtracted from unadjusted income for a taxable year in accordance with Subsection 53B-8a-106(1);
  - (s) for purposes of income included in a combined report under Part 4, Combined Reporting, the entire amount of the dividends a member of a unitary group receives or is considered to receive from a captive real estate investment trust;
  - (t) the increase in income for federal income tax purposes due to claiming a:
    - (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or
    - (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code;
  - (u) for a taxable year beginning on or after January 1, 2019, but beginning on or before December 31, 2019, only:
    - (i) the amount of any FDIC premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income tax purposes under Section 162(r), Internal Revenue Code, on the taxpayer's 2018 federal income tax return; plus
    - (ii) the amount of any FDIC premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income tax purposes under Section 162(r), Internal Revenue Code, for the taxable year; and
  - (v) for a taxable year beginning on or after January 1, 2020, the amount of any FDIC premium paid or incurred by the taxpayer that is disallowed as a deduction for federal income tax purposes under Section 162(r), Internal Revenue Code, for the taxable year.
- (2) For purposes of Subsection (1)(b):
- (a) the subtraction shall be made by claiming the subtraction on a return filed:
    - (i) under this chapter for the taxable year for which the net capital loss is incurred; and
    - (ii) by the due date of the return, including extensions; and
  - (b) a net capital loss for a taxable year shall be:
    - (i) subtracted for the taxable year for which the net capital loss is incurred; or
    - (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue Code.
- (3)
- (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a taxpayer shall first subtract from a dividend considered to be received or received an expense directly attributable to that dividend.

- (b) For purposes of Subsection (3)(a), the amount of an interest expense that is considered to be directly attributable to a dividend is calculated by multiplying the interest expense by a fraction:
    - (i) the numerator of which is the taxpayer's average investment in the dividend paying subsidiaries; and
    - (ii) the denominator of which is the taxpayer's average total investment in assets.
  - (c)
    - (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in determining income apportionable to this state, a portion of the factors of a foreign subsidiary that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the combined report factors as provided in this Subsection (3)(c).
    - (ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be included in the combined report factors is calculated by multiplying each factor of the foreign subsidiary by a fraction:
      - (A) not to exceed 100%; and
      - (B)
        - (I) the numerator of which is the amount of the dividend paid by the foreign subsidiary that is included in adjusted income; and
        - (II) the denominator of which is the current year earnings and profits of the foreign subsidiary as determined under the Internal Revenue Code.
  - (d) A dividend described in Subsection (1)(k) includes amounts included in federal taxable income under Section 965(a), Internal Revenue Code and amounts included in federal taxable income under Section 951A, Internal Revenue Code.
- (4)
- (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under Subsection (1)(l):
    - (i) if the taxpayer elects to file a worldwide combined report as provided in Section 59-7-403; or
    - (ii) for the following:
      - (A) income generated from intangible property; or
      - (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is generated from an asset held for investment and not from a regular business trading activity.
  - (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating company:
    - (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and
    - (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a transaction that occurs between members of a unitary group.
  - (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining income apportionable to this state, the factors for a foreign operating company shall be included in the combined report factors in the same percentages as the foreign operating company's adjusted income is included in the combined adjusted income.
  - (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes:
    - (i) income generated from intangible property; or
    - (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is generated from an asset held for investment and not from a regular business trading activity.
- (5)

- (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax credit is claimed if:
  - (i) there is a reduction in federal basis for a federal tax credit; and
  - (ii) there is no corresponding tax credit allowed in this state.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes an item similar to Subsections (1)(o)(i) through (iv).

Amended by Chapter 368, 2021 General Session

Amended by Chapter 370, 2021 General Session

**59-7-107 Basis.**

- (1)
  - (a) For property acquired after December 31, 1993, basis shall be determined pursuant to the Internal Revenue Code without reference to Section 1502, Internal Revenue Code, or regulations promulgated under that section.
  - (b) Notwithstanding Subsection (1)(a), adjustments for basis in a combined report may be established by rules promulgated by the tax commission.
- (2) For property acquired after December 31, 1930, but before January 1, 1994, basis shall be determined under Utah law in effect at the time the property was acquired.
- (3)
  - (a) Except as provided in Subsection (3)(c), the basis for determining the gain or loss from the sale or other disposition of property acquired before January 1, 1931, shall be:
    - (i) the cost of such property or in the case of property acquired by gift or transfer in trust, the fair market value of such property at the time of such acquisition; or
    - (ii) the fair market value of such property as of January 1, 1931, whichever is greater.
  - (b) In determining the fair market value of stock in a corporation as of January 1, 1931, due regard shall be given to the fair market value of the assets of the corporation as of that date.
  - (c)
    - (i) In determining the basis for inventory acquired before January 1, 1931, if the property should have been included in the last inventory, the basis shall be the value of that property at the last inventory.
    - (ii) In determining the basis for bequests and devises acquired before January 1, 1931, if personal property was acquired by specific bequest, or if real property was acquired by general or specific devise, the basis shall be the fair market value of the property at the time of the death of the decedent. In all other cases if the property was acquired by will, the basis shall be the fair market value of the property at the time of the distribution to the taxpayer.
    - (iii) In determining the basis for property acquired before January 1, 1931, during affiliation in which a combined report is filed under either Section 59-7-402 or 59-7-403, the basis shall be determined in accordance with rules prescribed by the commission.
- (4) If any property subject to taxation under this chapter was acquired before January 1, 1931, the basis of such property, if other than the fair market value as of January 1, 1931, shall be diminished in the amount of exhaustion, wear and tear, obsolescence, and depletion actually sustained before such date.

Repealed and Re-enacted by Chapter 169, 1993 General Session

**59-7-108 Distributions by corporations.**

- (1)
  - (a) For purposes of this chapter, a distribution is made out of earnings or profits to the extent of the earnings or profits, and from the most recently accumulated earnings or profits.
  - (b)
    - (i) Subject to Subsection (1)(b)(ii), any earnings or profits accumulated or increase in value of property accrued before January 1, 1931, may be excluded from taxable income after the earnings and profits accumulated after December 31, 1930 have been distributed.
    - (ii) A distribution described in Subsection (1)(b)(i) shall be applied against and reduce the basis of the stock.
- (2)
  - (a) Subject to Subsection (2)(b), if any distribution that is not in partial or complete liquidation is made by a corporation to its shareholders, is not out of increase in value of property accrued before January 1, 1931, and is not out of earnings or profits, the amount of the distribution shall be applied against and reduce the basis of the stock.
  - (b) If a distribution described in Subsection (2)(a) is in excess of the basis of the stock, the excess shall be treated as a gain from the sale or exchange of property.

Amended by Chapter 69, 2011 General Session

**59-7-109 Charitable contributions.**

- (1) Except as provided in Subsection (2), a subtraction is allowed for charitable contributions made within the taxable year to organizations described in Section 170(c), Internal Revenue Code.
- (2) The aggregate amount of charitable contributions deductible under this section may not exceed 10% of the taxpayer's apportionable income. The limitation imposed in this subsection shall be calculated on a combined basis in a combined report.
- (3) Any charitable contribution made in a taxable year beginning on or after January 1, 1994, which is in excess of the amount allowed as a deduction under Subsection (2) may be carried over to the five succeeding taxable years in the same manner as allowed under federal law.

Amended by Chapter 311, 1995 General Session

**59-7-109.1 Charitable contributions to the Special Needs Opportunity Scholarship Program.**

- (1) Notwithstanding anything to the contrary in Section 59-7-109, a taxpayer may not subtract a charitable contribution that meets the requirements of Section 59-7-109 to the extent that the taxpayer claims a tax credit under Section 59-7-625 for the same charitable contribution.
- (2) This section supersedes any conflicting provisions of Utah law.

Enacted by Chapter 3, 2020 Special Session 4

**59-7-110 Utah net loss -- Carry forward -- Deduction.**

- (1) A taxpayer shall determine the amount of Utah net loss that the taxpayer may carry forward to offset income of another taxable year as provided in this section.
- (2) Subject to the other provisions of this section, a taxpayer:
  - (a) may carry forward a Utah net loss from a taxable year beginning on or after January 1, 2008, to a future taxable year until the Utah net loss is exhausted; and
  - (b) may not carry back a Utah net loss from a taxable year.

- (3) A taxpayer that carries forward a Utah net loss shall carry forward the Utah net loss to the earliest eligible year for which the Utah taxable income before net loss deduction, minus Utah net losses from previous years that a taxpayer applied or was required to apply to offset income, is not less than zero.
- (4)
  - (a) Subject to Subsection (4)(b), the amount of Utah net loss that a taxpayer may carry to the year identified in Subsection (3) is the lesser of:
    - (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that a taxpayer carried to previous years; or
    - (ii) the remaining Utah taxable income before net loss deduction of the year identified in Subsection (3) after deduction of Utah net losses from previous years that a taxpayer carried or was required to carry to the year identified in Subsection (3).
  - (b)
    - (i) For a Utah net loss carried forward to a taxable year beginning on or after January 1, 2023, the amount of Utah net loss that a taxpayer may carry forward to a taxable year may not exceed 80% of Utah taxable income calculated before deducting any Utah net loss from Utah taxable income.
    - (ii) A taxpayer may carry a remaining Utah net loss to one or more taxable years in accordance with this section.
- (5)
  - (a)
    - (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of another corporation may not deduct any net loss incurred by the acquired corporation prior to the date of acquisition.
    - (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of the state of incorporation.
  - (b) An acquired corporation may deduct the acquired corporation's net losses incurred before the date of acquisition against the acquired corporation's separate income as calculated under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or business substantially the same as that conducted before the acquisition.
- (6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation that is acquired by a unitary group may deduct is calculated by:
  - (a) subject to Subsection (7):
    - (i) calculating the sum of:
      - (A) an amount determined by dividing the average value of the acquired corporation's real and tangible personal property owned or rented and used in this state during the taxable year by the average value of all of the unitary group's real and tangible personal property owned or rented and used during the taxable year;
      - (B) an amount determined by dividing the total amount paid in this state during the taxable year by the acquired corporation for compensation by the total compensation paid everywhere by the unitary group during the taxable year; and
      - (C) an amount determined by dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year; or
    - (ii) if the unitary group is required or elects to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(2), calculating an amount determined by dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year;

- (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of the fraction the unitary group uses to apportion business income to this state for that taxable year in accordance with Section 59-7-311;
- (c) multiplying the amount calculated under Subsection (6)(b) by the business income of the unitary group for the taxable year that is subject to apportionment under Section 59-7-311; and
- (d) calculating the sum of:
  - (i) the amount calculated under Subsection (6)(c); and
  - (ii) the following amounts allocable to the acquired corporation for the taxable year:
    - (A) nonbusiness income allocable to this state; or
    - (B) nonbusiness loss allocable to this state.
- (7) The amounts calculated under Subsection (6)(a) shall be derived in the same manner as those amounts are derived for purposes of apportioning the unitary group's business income before deducting the net loss, including a modification made in accordance with Section 59-7-320.

Amended by Chapter 506, 2023 General Session

**59-7-111 Safe harbor lease provisions.**

- (1)
  - (a) For purchasers or lessors of safe harbor leases, the following additions shall be made to unadjusted income:
    - (i) interest expense; and
    - (ii) depreciation claimed on safe harbor lease property.
  - (b) For purchasers or lessors of safe harbor leases, the following subtractions shall be made from unadjusted income:
    - (i) rental income; and
    - (ii) amortization of the purchase price of tax benefits.
- (2)
  - (a) For sellers or lessees of safe harbor leases the following additions shall be made from unadjusted income:
    - (i) the amount of gain on the sale of federal tax benefits; and
    - (ii) rental expense on safe harbor lease property.
  - (b) For sellers or lessees of safe harbor leases the following subtractions shall be made to unadjusted income:
    - (i) interest income; and
    - (ii) depreciation on safe harbor lease property.

Repealed and Re-enacted by Chapter 169, 1993 General Session

**59-7-112 Installment sales.**

- (1) Except as provided in Subsections (2) and (3), installment sales shall be governed by Sections 453, 453A, and 453B, Internal Revenue Code.
- (2) Installment sales entered into prior to January 1, 1994, shall be recognized as originally reported.
- (3) If a corporation is no longer required to file a Utah corporate return, any taxes owed by that corporation on installment sales entered into by that corporation shall accelerate and be due on the corporation's last return filed in Utah.

Repealed and Re-enacted by Chapter 169, 1993 General Session

**59-7-113 Allocation of income and deductions between several corporations controlled by same interests.**

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 of such corporations.

Repealed and Re-enacted by Chapter 169, 1993 General Session

**59-7-114 Section 338, Internal Revenue Code -- Elections.**

- (1) Transactions for which an election has been made or considered to be made for federal purposes under Section 338, Internal Revenue Code, shall be treated as provided in this section. An election is not available for state purposes unless an election is made or considered to be made for federal purposes.
- (2) If an election is made or considered to be made for federal purposes under Section 338, Internal Revenue Code, other than under Subsection 338(h)(10):
  - (a) the target corporation shall file a separate entity one-day tax return for state purposes, as is required for federal purposes, and shall include in such return the gain or loss on the deemed sale of assets in its adjusted income;
  - (b) the gain or loss on the deemed sale of assets shall be apportioned to this state using the apportionment fraction of the target corporation calculated on a separate entity basis for the most recent preceding taxable year consisting of 180 days or more; and
  - (c) the due date of the one-day return shall be the same as the due date of the return which includes the taxable period of the target corporation which immediately precedes the one-day return.
- (3) If an election is made for federal purposes under Subsection 338(h)(10), Internal Revenue Code, the following shall apply:
  - (a) if the target corporation is a member of a unitary group immediately preceding the acquisition date, the target corporation shall be included in a combined return to the extent of its income through the acquisition date, and the gain or loss on the deemed sale of assets shall be included in the combined income of the unitary group;
  - (b) if the target corporation is not a member of a unitary group immediately preceding the acquisition date, the target corporation shall file a short period return for the period ending on the acquisition date and shall include in such return the gain or loss on the deemed sale of assets in its adjusted income; and
  - (c) any gain or loss which is not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, may not be included in the adjusted income of the selling corporation.
- (4) There is a rebuttable presumption that the gain or loss on the deemed sale of assets constitutes business income.
- (5) The new basis of the target corporation's assets shall be determined under Section 338, Internal Revenue Code.
- (6) The target corporation shall be treated as a new corporation as of the day after the acquisition date.



- (7) The commission may prescribe such rules as necessary to provide for the equitable treatment of any transaction subject to Section 338, Internal Revenue Code.

Amended by Chapter 9, 2001 General Session

**59-7-115 Section 336(e), Internal Revenue Code -- Elections.**

- (1) Transactions for which an election has been made for federal purposes under Section 336(e), Internal Revenue Code, shall be treated as provided in this section. An election is not available for state purposes unless an election is made for federal purposes.
- (2) If an election is made under Section 336(e), Internal Revenue Code, the following shall apply:
  - (a) if the corporation is treated for federal purposes as having disposed of all of its assets and is a member of a unitary group immediately preceding the date of sale, the corporation shall be included in a combined return to the extent of its income through the date of sale, and the gain or loss on the deemed disposal of assets shall be included in the combined income of the unitary group;
  - (b) if the corporation is treated for federal purposes as having disposed of all of its assets and is not a member of a unitary group immediately preceding the date of sale, the corporation shall file a short period return for the period ending on the date of sale and shall include in such return the gain or loss on the deemed disposal of assets in its adjusted income; and
  - (c) any gain or loss which is not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation pursuant to Section 336(e), Internal Revenue Code, may not be included in adjusted income.
- (3) There is a rebuttable presumption that the gain or loss on the deemed disposition of assets constitutes business income.
- (4) The new basis of assets of the corporation which is treated as having disposed of its assets shall be the same as determined for federal purposes.
- (5) The corporation which is treated as having disposed of its assets shall be treated as a new corporation as of the day after the date of sale.
- (6) The commission may prescribe such rules as necessary to provide for the equitable treatment of any transaction subject to Section 336(e), Internal Revenue Code.

Repealed and Re-enacted by Chapter 169, 1993 General Session

**59-7-116 Taxation of regulated investment companies.**

- (1) A regulated investment company or a fund of such a company, as defined in Sections 851(a) or 851(g), Internal Revenue Code, which is organized under the laws of Utah, shall determine Utah taxable income as follows:
  - (a) calculate investment company taxable income, as determined in Section 852(b)(2), Internal Revenue Code;
  - (b) add any municipal interest and the exclusion of net capital gain provided in Section 852(b)(2)(A), Internal Revenue Code; and
  - (c) subtract the deduction for the capital gain dividends and exempt interest dividends as defined in Sections 852(b)(3)(C) and 852(b)(5), Internal Revenue Code.
- (2) A regulated investment company which is organized under the laws of Utah or a fund of such a company, shall be taxed at the same rate and in the same manner as a corporation as provided in this chapter.

Amended by Chapter 250, 2008 General Session

**59-7-116.5 Real estate investment trusts.**

- (1) A real estate investment trust that is not a captive real estate investment trust shall be taxed on the same income taxed for federal purposes under the Internal Revenue Code.
- (2) Any income taxable under this section shall be taxed at the same rate and in the same manner provided for in this chapter.

Amended by Chapter 389, 2008 General Session

**59-7-117 Equitable adjustments.**

The commission shall by rule prescribe for adjustments to Utah taxable income when, solely by reason of the enactment of this chapter, a taxpayer would otherwise receive or have received a double tax benefit or suffer or have suffered a double tax detriment. However, the commission may not make any adjustment pursuant to this section which will result in an increase or decrease of tax liability that is less than \$25.

Repealed and Re-enacted by Chapter 169, 1993 General Session

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

- (1) Subject to the other provisions of this section, a corporation may pay in installments the tax owed under this chapter on deferred foreign income described in Section 965, Internal Revenue Code.
- (2) Subsection (1) applies:
  - (a) to a corporation that:
    - (i) is authorized to make an election under Section 965(h), Internal Revenue Code; and
    - (ii) apportions deferred foreign income described in Section 965, Internal Revenue Code, to this state; and
  - (b) for a tax year in which a corporation makes an election under Section 965(h), Internal Revenue Code, for purposes of the corporation's federal income tax.
- (3)
  - (a) Except as provided in Subsection (3)(b), the same provisions that apply to an election made under Section 965(h), Internal Revenue Code, for federal purposes apply to an installment payment made under this section.
  - (b) A corporation shall make:
    - (i) the first installment under this section on or before the due date of the tax return filed under this chapter for the first taxable year in which the corporation reports deferred foreign income described in Section 965, Internal Revenue Code; and
    - (ii) a subsequent installment on or before the due date of the tax return filed under this chapter in each of the following seven years.

Amended by Chapter 367, 2021 General Session

**59-7-159 Review of credits allowed under this chapter.**

- (1) As used in this section, "committee" means the Revenue and Taxation Interim Committee.
- (2)
  - (a) The committee shall review the tax credits described in this chapter as provided in Subsection (3) and make recommendations concerning whether the tax credits should be continued, modified, or repealed.

- (b) In conducting the review required under Subsection (2)(a), the committee shall:
  - (i) schedule time on at least one committee agenda to conduct the review;
  - (ii) invite state agencies, individuals, and organizations concerned with the tax credit under review to provide testimony;
  - (iii)
    - (A) invite the Governor's Office of Economic Opportunity to present a summary and analysis of the information for each tax credit regarding which the Governor's Office of Economic Opportunity is required to make a report under this chapter; and
    - (B) invite the Office of the Legislative Fiscal Analyst to present a summary and analysis of the information for each tax credit regarding which the Office of the Legislative Fiscal Analyst is required to make a report under this chapter;
  - (iv) ensure that the committee's recommendations described in this section include an evaluation of:
    - (A) the cost of the tax credit to the state;
    - (B) the purpose and effectiveness of the tax credit; and
    - (C) the extent to which the state benefits from the tax credit; and
  - (v) undertake other review efforts as determined by the committee chairs or as otherwise required by law.
- (3)
  - (a) On or before November 30, 2017, and every three years after 2017, the committee shall conduct the review required under Subsection (2) of the tax credits allowed under the following sections:
    - (i) Section 59-7-601;
    - (ii) Section 59-7-607;
    - (iii) Section 59-7-612;
    - (iv) Section 59-7-614.1; and
    - (v) Section 59-7-614.5.
  - (b) On or before November 30, 2018, and every three years after 2018, the committee shall conduct the review required under Subsection (2) of the tax credits allowed under the following sections:
    - (i) Section 59-7-609;
    - (ii) Section 59-7-614.2;
    - (iii) Section 59-7-614.10; and
    - (iv) Section 59-7-619.
  - (c) On or before November 30, 2019, and every three years after 2019, the committee shall conduct the review required under Subsection (2) of the tax credits allowed under the following sections:
    - (i) Section 59-7-610;
    - (ii) Section 59-7-614; and
    - (iii) Section 59-7-614.7.
  - (d)
    - (i) In addition to the reviews described in this Subsection (3), the committee shall conduct a review of a tax credit described in this chapter that is enacted on or after January 1, 2017.
    - (ii) The committee shall complete a review described in this Subsection (3)(d) three years after the effective date of the tax credit and every three years after the initial review date.

Amended by Chapter 264, 2022 General Session  
Amended by Chapter 274, 2022 General Session

