

**Effective 1/1/2018**

**Superseded 5/8/2018**

**59-7-302 Definitions -- Determination of taxpayer status.**

- (1) As used in this part, unless the context otherwise requires:
- (a) "Aircraft type" means a particular model of aircraft as designated by the manufacturer of the aircraft.
  - (b) "Airline" means the same as that term is defined in Section 59-2-102.
  - (c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during the airline's tax period.
  - (d) "Business income" means income arising from transactions and activity in the regular course of the taxpayer'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 taxpayer's regular trade or business operations.
  - (e) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
  - (f) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.
  - (g)
    - (i) Except as provided in Subsection (1)(g)(ii), "mobile flight equipment" means the same as that term is defined in Section 59-2-102.
    - (ii) "Mobile flight equipment" does not include:
      - (A) a spare engine; or
      - (B) tangible personal property described in Subsection 59-2-102(27) owned by an air charter service or an air contract service.
  - (h) "Nonbusiness income" means all income other than business income.
  - (i) Subject to Subsection (2), "optional sales factor weighted taxpayer" means:
    - (i) for a taxpayer that is not a unitary group, regardless of the number of economic activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code within NAICS Subsector 334, Computer and Electronic Product Manufacturing, of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; or
    - (ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code within NAICS Subsector 334, Computer and Electronic Product Manufacturing, of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.
  - (j) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.
  - (k) "Sales" means all gross receipts of the taxpayer not allocated under Sections 59-7-306 through 59-7-310.
  - (l) Subject to Subsection (2), "sales factor weighted taxpayer" means:
    - (i) for a taxpayer that is not a unitary group, regardless of the number of economic activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American Industry

Classification System of the federal Executive Office of the President, Office of Management and Budget, except for:

- (A) a NAICS code within NAICS Sector 21, Mining;
  - (B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;
  - (C) a NAICS code within NAICS Sector 31-33, Manufacturing, other than NAICS Code 336111, Automobile Manufacturing;
  - (D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;
  - (E) a NAICS code within NAICS Sector 51, Information, other than NAICS Subsector 519, Other Information Services; or
  - (F) a NAICS code within NAICS Sector 52, Finance and Insurance; or
- (ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for a NAICS code under Subsections (1)(l)(i)(A) through (F).
- (m) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.
- (n) "Transportation revenue" means revenue an airline earns from:
- (i) transporting a passenger or cargo; or
  - (ii) from miscellaneous sales of merchandise as part of providing transportation services.
- (o) "Utah revenue ton miles" means, for an airline, the total revenue ton miles within the borders of this state:
- (i) during the airline's tax period; and
  - (ii) from flight stages that originate or terminate in this state.
- (2) The following apply to Subsections (1)(i) and (l):
- (a)
- (i) Subject to the other provisions of this Subsection (2), for each taxable year, a taxpayer shall determine whether the taxpayer is a sales factor weighted taxpayer.
  - (ii) A taxpayer shall make the determination required by Subsection (2)(a)(i) before the due date for filing the taxpayer's return under this chapter for the taxable year, including extensions.
  - (iii) For purposes of making the determination required by Subsection (2)(a)(i), total sales everywhere include only the total sales everywhere:
    - (A) as determined in accordance with this part; and
    - (B) made during the taxable year for which a taxpayer makes the determination required by Subsection (2)(a)(i).
- (b)
- (i)
    - (A) Subject to other provisions of this Subsection (2), for each taxable year, a taxpayer that is not a sales factor weighted taxpayer may determine whether the taxpayer is an optional sales factor weighted taxpayer.
    - (B) A taxpayer that is not a sales factor weighted taxpayer shall determine that the taxpayer is an optional sales factor weighted taxpayer before the taxpayer may use the apportionment options described in Subsection 59-7-311(4).
  - (ii) A taxpayer making the determination described in Subsection (2)(b)(i) shall make the determination before the due date for filing the taxpayer's return under this chapter for the taxable year, including extensions.

- (iii) For purposes of making the determination described in Subsection (2)(b)(i), total sales everywhere include only the total sales everywhere:
  - (A) as determined in accordance with this part; and
  - (B) made during the taxable year for which a taxpayer makes a determination described in Subsection (2)(b)(i).
- (c) A taxpayer that files a return as a unitary group for a taxable year is considered to be a unitary group for that taxable year.
- (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may define the term "economic activity" consistent with the use of the term "activity" in the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.