

1 **CORPORATE FRANCHISE AND INCOME**
2 **TAXES - TREATMENT OF CERTAIN**
3 **COOPERATIVES**

4 2002 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: John L. Valentine**

7 **This act modifies the Corporate Franchise and Income Taxes Act to define terms, to amend**
8 **the exemption from state corporate franchise and income taxes for certain cooperatives, and**
9 **to make technical changes. This act has an immediate effective date. This act has**
10 **retrospective operation for taxable years beginning on or after January 1, 2002.**

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 AMENDS:

13 **59-7-101**, as last amended by Chapter 331, Laws of Utah 1997

14 **59-7-102**, as last amended by Chapter 331, Laws of Utah 1997

15 **59-7-402**, as last amended by Chapters 20 and 311, Laws of Utah 1995

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

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

18 **59-7-101. Definitions.**

19 As used in this chapter:

20 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and
21 59-7-106.

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

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

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



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

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

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

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

36 (5) "Business income" means income as defined in Section 59-7-302.

37 (6) "Corporate return" or "return" includes a combined report.

38 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
39 than 50% of the outstanding voting stock of:

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

42 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue Code,
43 except that 50% shall be substituted for 80%; or

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

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

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

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

51 (8) "Corporation" includes:

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

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

56 (9) "Dividend" means any distribution, including money or other type of property, made
57 by a corporation to its shareholders out of its earnings or profits accumulated after December 31,
58 1930.

59 (10) (a) "Doing business" includes any transaction in the course of its business by a
60 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in this
61 state~~[, and, except]~~.

62 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:

63 (i) the right to do business through incorporation or qualification[;];

64 (ii) the owning, renting, or leasing of real or personal property within this state[;]; and

65 (iii) the participation in joint ventures, working and operating agreements, the performance
66 of which takes place in this state.

67 (11) "Domestic corporation" means a corporation [which] that is incorporated or organized
68 under the laws of this state.

69 (12) (a) "Farmers' cooperative" means an association, corporation, or other organization
70 that is:

71 (i) (A) an association, corporation, or other organization of:

72 (I) farmers; or

73 (II) fruit growers; or

74 (B) an association, corporation, or other organization that is similar to an association,
75 corporation, or organization described in Subsection (12)(a)(i)(A); and

76 (ii) organized and operated on a cooperative basis to:

77 (A) (I) market the products of members of the cooperative or the products of other
78 producers; and

79 (II) return to the members of the cooperative or other producers the proceeds of sales less
80 necessary marketing expenses on the basis of the quantity of the products of a member or producer
81 or the value of the products of a member or producer; or

82 (B) (I) purchase supplies and equipment for the use of members of the cooperative or other
83 persons; and

84 (II) turn over the supplies and equipment described in Subsection (12)(a)(ii)(B)(I) at actual
85 costs plus necessary expenses to the members of the cooperative or other persons.

86 (b) (i) Subject to Subsection (12)(b)(ii), for purposes of this Subsection (12), the
87 commission by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
88 Rulemaking Act, shall define:

89 (A) the terms:

90 (I) "member"; and
91 (II) "producer"; and
92 (B) what constitutes an association, corporation, or other organization that is similar to
93 an association, corporation, or organization described in Subsection (12)(a)(i)(A).

94 (ii) The rules made under this Subsection (12)(b) shall be consistent with the filing
95 requirements under federal law for a farmers' cooperative.

96 ~~(12)~~ (13) "Foreign corporation" means a corporation ~~[which]~~ that is not incorporated or
97 organized under the laws of this state.

98 ~~(13)~~ (14) (a) "Foreign operating company" means a corporation ~~[which]~~ that:

99 (i) is incorporated in the United States~~[-];~~ and

100 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is
101 conducted outside the United States.

102 (b) "Foreign operating company" does not include a corporation ~~[which]~~ that qualifies for
103 the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

104 ~~(14)~~ (15) "Foreign sales corporation" means a corporation as defined in Section 922,
105 Internal Revenue Code.

106 ~~(15)~~ (16) "Income" includes losses.

107 ~~(16)~~ (17) "Internal Revenue Code" means Title 26 of the United States Code as effective
108 during the year in which Utah taxable income is determined.

109 ~~(17)~~ (18) "Nonbusiness income" means income as defined in Section 59-7-302.

110 ~~(18)~~ (19) "Nonresident shareholder" means any shareholder of an S corporation who on
111 the last day of the taxable year of the S corporation, is;

112 (a) an individual not domiciled in Utah; or

113 (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.

114 ~~(19)~~ (20) "Related expenses" means:

115 (a) expenses directly attributable to nonbusiness income; and

116 (b) the portion of interest or other expense indirectly attributable to both nonbusiness and
117 business income which bears the same ratio to the aggregate amount of such interest or other
118 expense, determined without regard to this Subsection (20), as the average amount of the asset
119 producing the nonbusiness income bears to the average amount of all assets of the taxpayer within
120 the taxable year.

121 ~~[(20)]~~ (21) "Resident shareholder" means any shareholder of an S corporation who is not
122 a nonresident shareholder.

123 ~~[(21)]~~ (22) "S corporation" means a small business corporation as defined in Section 1361,
124 Internal Revenue Code.

125 ~~[(22)]~~ (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
126 Section 168, Internal Revenue Code.

127 ~~[(23)]~~ (24) "State of the United States" includes any of the 50 states or the District of
128 Columbia and "United States" includes the 50 states and the District of Columbia.

129 ~~[(24)]~~ (25) (a) "Taxable year" means the calendar year or the fiscal year ending during such
130 calendar year upon the basis of which the adjusted income is computed~~[, and also includes, in],~~

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

134 ~~[(25)]~~ (26) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

135 ~~[(26)]~~ (27) "Threshold level of business activity" means business activity in the United
136 States equal to or greater than 20% of the corporation's total business activity as determined under
137 Section 59-7-401.

138 ~~[(27)]~~ (28) "Unadjusted income" means federal taxable income as determined on a separate
139 return basis before intercompany eliminations as determined by the Internal Revenue Code, before
140 the net operating loss deduction and special deductions for dividends received.

141 ~~[(28)]~~ (29) (a) "Unitary group" means a group of corporations that:

142 (i) are related through common ownership; and

143 (ii) **§ BY A PREPONDERANCE OF THE EVIDENCE AS DETERMINED BY A COURT OF**

143a **COMPETENT JURISDICTION OR THE COMMISSION,** § are economically interdependent with one

143b another as demonstrated by the following

144 factors:

145 (A) centralized management;

146 (B) functional integration; **§ [~~or~~] §**

147 (C) economies of scale.

148 (b) "Unitary group" does not include S corporations.

149 ~~[(29)]~~ (30) "Utah net loss" means the current year Utah taxable income before Utah net
150 loss deduction, if determined to be less than zero.

151 ~~[(30)]~~ (31) "Utah net loss deduction" means the amount of Utah net losses from other

152 taxable years [~~which~~] that may be carried back or carried forward to the current taxable year in
 153 accordance with Section 59-7-110.

154 [~~(31)~~] (32) (a) "Utah taxable income" means Utah taxable income before net loss
 155 deduction less Utah net loss deduction.

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

159 [~~(32)~~] (33) "Utah taxable income before net loss deduction" means apportioned income
 160 plus nonbusiness income allocable to Utah net of related expenses.

161 [~~(33)~~] (34) (a) "Water's edge combined report" means a report combining the income and
 162 activities of:

163 (i) all members of a unitary group [~~which~~] that are:

164 (A) corporations organized or incorporated in the United States, including those
 165 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936,
 166 Internal Revenue Code, in accordance with Subsection [~~(33)~~] (34)(b); and

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

169 (ii) an affiliated group electing to file a water's edge combined report under Subsection
 170 59-7-402(2).

171 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto Rico
 172 and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a unitary
 173 group.

174 [~~(34)~~] (35) "Worldwide combined report" means the combination of the income and
 175 activities of all members of a unitary group irrespective of the country in which the corporations
 176 are incorporated or conduct business activity.

177 Section 2. Section **59-7-102** is amended to read:

178 **59-7-102. Exemptions.**

179 (1) Except as provided in [~~Part 8~~] this section, the following are exempt from this chapter:

180 (a) [~~organizations~~] an organization exempt under [~~Sections~~] Section 501 [~~and 521~~],
 181 Internal Revenue Code[, ~~and organizations meeting the requirements of Subchapter T, Internal~~
 182 ~~Revenue Code~~];

183 (b) ~~[organizations]~~ an organization exempt under Section 528, Internal Revenue Code[
 184 ~~provided that to the extent such organization's income is taxable for federal tax purposes under~~
 185 ~~Section 528, such organization's income is also taxable under this chapter];~~

186 (c) an insurance ~~[companies which are]~~ company that is otherwise taxed on ~~[their]~~ the
 187 insurance company's premiums under ~~[Title 59,]~~ Chapter 9, Taxation of Admitted Insurers; ~~[and]~~

188 (d) a building ~~[authorities]~~ authority as defined in Section 17A-3-902[-]; or

189 (e) a farmers' cooperative.

190 (2) Notwithstanding any other provision in ~~[Chapter 7]~~ this chapter or Chapter 8, Gross
 191 Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax,

192 a person not otherwise subject to the tax imposed by this chapter or Chapter 8 ~~[shall]~~ is not
 193 ~~[become]~~ subject to the tax imposed by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, ~~[by~~
 194 ~~reason]~~ because of:

195 (a) that person's ownership of tangible personal property located at the premises of a
 196 printer's facility in this state with which the person has contracted for printing; or

197 (b) the activities of the person's employees or agents who are:

198 (i) located solely at the premises of a printer's facility; and ~~[who are]~~

199 (ii) performing services;

200 (A) related to:

201 (I) quality control[-];

202 (II) distribution[-]; or

203 (III) printing services; and

204 (B) performed by the printer's facility in this state with which the person has contracted
 205 for printing.

206 (3) Notwithstanding Subsection (1), an organization, company, authority, or farmers'
 207 cooperative exempt from this chapter under Subsection (1) is subject to Part 8, Unrelated Business
 208 Income, to the extent provided in Part 8.

209 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization
 210 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal
 211 Revenue Code, the organization's income is also taxable under this chapter.

212 Section 3. Section **59-7-402** is amended to read:

213 **59-7-402. Water's edge combined report.**

214 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection
215 59-7-101 [~~(33)~~] (34)(a) is doing business in Utah, the unitary group shall file a water's edge
216 combined report.

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

- 219 (i) doing business in Utah;
- 220 (ii) part of the same affiliated group; and
- 221 (iii) qualified, under Section 1501, Internal Revenue Code, to file a federal consolidated
222 return.

223 (b) Each corporation within the affiliated group that is doing business in Utah must
224 consent to filing a combined report. If an affiliated group elects to file a combined report, each
225 corporation within the affiliated group that is doing business in Utah must file a combined report.

226 (c) Corporations that elect to file a water's edge combined report under this section may
227 not thereafter elect to file a separate return without the consent of the commission.

228 **Section 4. Effective date.**

229 If approved by two-thirds of all the members elected to each house, this act takes effect
230 upon approval by the governor, or the day following the constitutional time limit of Utah
231 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
232 date of veto override.

233 **Section 5. Retrospective operation.**

234 This act has retrospective operation for taxable years beginning on or after January 1, 2002.

Legislative Review Note
as of 1-9-02 3:58 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel