

CORPORATE FRANCHISE AND INCOME TAX

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Gordon E. Snow

LONG TITLE

General Description:

This bill amends the Corporate Franchise and Income Taxes chapter.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "nonresident shareholder" to repeal language providing that an organization exempt under Section 501, Internal Revenue Code, is a nonresident shareholder;
- ▶ amends the definition of "S corporation";
- ▶ repeals references to foreign sales corporations that have been repealed under federal law; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

59-7-101 (Contingently Superseded 05/02/05), as last amended by Chapter 110, Laws of Utah 2003

59-7-101 (Contingently Effective 05/02/05), as last amended by Chapter 327, Laws of



Utah 2003

59-7-402, as last amended by Chapter 76, Laws of Utah 2002

REPEALS:

59-7-106.5, as enacted by Chapter 178, Laws of Utah 1994

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

Section 1. Section **59-7-101 (Contingently Superseded 05/02/05)** is amended to read:

59-7-101 (Contingently Superseded 05/02/05). 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 income~~] is as defined in Section 59-7-302.

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

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

(i) a parent-subsidary 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, except that 50% shall be substituted for 80%; or

(iii) three or more corporations each of which is a member of a group of corporations described in Subsection (2)(a)(i) or (2)(a)(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.

(8) "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.

(9) "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.

(10) (a) "Doing business" includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in this state.

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

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

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

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

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

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

(i) (A) an association, corporation, or other organization of:
(I) farmers; or
(II) fruit growers; or
(B) an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (12)(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 (12)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or other persons.

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

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

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

(13) "Foreign corporation" means a corporation that is not incorporated or organized under the laws of this state.

(14) (a) "Foreign operating company" means a corporation that:
(i) is incorporated in the United States; and
(ii) 80% or more of whose business activity, as determined under Section 59-7-401, is conducted 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.

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

~~[(16)]~~ (15) "Income" includes losses.

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

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

~~[(19)]~~ (18) "Nonresident shareholder" means any shareholder of an S corporation who on the last day of the taxable year of the S corporation, is:

(a) an individual not domiciled in Utah; or

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

~~[(c) an organization exempt under Section 501, Internal Revenue Code.]~~

~~[(20)]~~ (19) "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 which bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection ~~[(20)]~~ (19), 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.

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

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

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

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

~~[(25)]~~ (24) (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.

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

~~[(27)]~~ (26) "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.

~~[(28)]~~ (27) "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 for dividends received.

~~[(29)]~~ (28) (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" does not include S corporations.

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

~~[(31)]~~ (30) "Utah net loss deduction" means the amount of Utah net losses from other taxable years that may be carried back or carried forward to the current taxable year in accordance with Section 59-7-110.

~~[(32)]~~ (31) (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.

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

183 ~~[(34)]~~ (33) (a) "Water's edge combined report" means a report combining the income
184 and activities of:

185 (i) all members of a unitary group that are:

186 (A) corporations organized or incorporated in the United States, including those
187 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
188 936, Internal Revenue Code, in accordance with Subsection ~~[(34)]~~ (33)(b); and

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

191 (ii) an affiliated group electing to file a water's edge combined report under Subsection
192 59-7-402(2).

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

196 ~~[(35)]~~ (34) "Worldwide combined report" means the combination of the income and
197 activities of all members of a unitary group irrespective of the country in which the
198 corporations are incorporated or conduct business activity.

199 Section 2. Section **59-7-101 (Contingently Effective 05/02/05)** is amended to read:

200 **59-7-101 (Contingently Effective 05/02/05). Definitions.**

201 As used in this chapter:

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

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

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

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

212 (b) "Affiliated group" does not include corporations that are qualified to do business
213 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 income~~] is as defined in Section 59-7-302.

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

(7) (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, except that 50% shall be substituted for 80%; or

(iii) three or more corporations each of which is a member of a group of corporations described in Subsection (2)(a)(i) or (2)(a)(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.

(8) "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.

(9) "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.

(10) (a) "Doing business" includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in

245 this state.

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

247 (i) the right to do business through incorporation or qualification;

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

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

251 (11) "Domestic corporation" means a corporation that is incorporated or organized
252 under the laws of this state.

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

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

256 (I) farmers; or

257 (II) fruit growers; or

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

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

261 (A) (I) market the products of members of the cooperative or the products of other
262 producers; and

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

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

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

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

273 (A) the terms:

274 (I) "member"; and

275 (II) "producer"; and

(B) what constitutes an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (12)(a)(i)(A).

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

(13) "Foreign corporation" means a corporation that is not incorporated or organized under the laws of this state.

(14) (a) "Foreign operating company" means a corporation that:

(i) is incorporated in the United States; and

(ii) 80% or more of whose business activity, as determined under Section 59-7-401, is conducted 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.

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

~~[(16)]~~ (15) "Income" includes losses.

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

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

~~[(19)]~~ (18) "Nonresident shareholder" means any shareholder of an S corporation who on the last day of the taxable year of the S corporation, is:

(a) an individual not domiciled in Utah; or

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

~~[(c) an organization exempt under Section 501, Internal Revenue Code.]~~

~~[(20)]~~ (19) "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 which bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection ~~[(20)]~~ (19), 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.

~~[(21)]~~ (20) "Resident shareholder" means any shareholder of an S corporation who is

not a nonresident shareholder.

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

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

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

~~[(25)]~~ (24) (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.

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

~~[(27)]~~ (26) "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.

~~[(28)]~~ (27) Except as provided in Section 59-7-102, "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 for dividends received.

~~[(29)]~~ (28) (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" does not include S corporations.

~~[(30)]~~ (29) "Utah net loss" means the current year Utah taxable income before Utah net

loss deduction, if determined to be less than zero.

~~[(31)]~~ (30) "Utah net loss deduction" means the amount of Utah net losses from other taxable years that may be carried back or carried forward to the current taxable year in accordance with Section 59-7-110.

~~[(32)]~~ (31) (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.

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

~~[(34)]~~ (33) (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 ~~[(34)]~~ (33)(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.

~~[(35)]~~ (34) "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.

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

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

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

combined report.

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

(i) doing business in Utah;

(ii) part of the same affiliated group; and

(iii) qualified, under Section 1501, Internal Revenue Code, to file a federal consolidated return.

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

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

Section 4. Repealer.

This bill repeals:

Section **59-7-106.5, Foreign sales corporations.**

Section 5. Retrospective operation -- Effective date.

(1) Except as provided in Subsection (2), this bill has retrospective operation for taxable years beginning on or after January 1, 2004.

(2) The amendments in this bill to Section 59-7-101 (Contingently Effective 05/02/05) take effect as provided in Chapter 327, Section 30, Laws of Utah 2003.

Legislative Review Note

as of 12-10-03 2:49 PM

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

Office of Legislative Research and General Counsel