

1 **CORPORATE FRANCHISE AND INCOME TAX**
2 **AMENDMENTS**

3 2005 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Wayne A. Harper**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Corporate Franchise and Income Taxes chapter relating to the
10 minimum tax, tax rates, and apportionment of income.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ reduces the corporate franchise tax and corporate income tax rates over a five-year
14 period beginning with the taxable year that begins on or after January 1, 2008, but
15 begins on or before December 31, 2008;

16 ▶ provides that for taxable years beginning on or after January 1, 2012, a tax rate is
17 not imposed on a corporation;

18 ~~It~~ → [▶ for taxable years beginning on or after January 1, 1994, but beginning on or before
19 December 31, 2011, increases the minimum tax from \$100 to \$250 for purposes of
20 the corporate franchise tax and corporate income tax;] ← ~~It~~

21 ▶ for taxable years beginning on or after January 1, 2012, provides that a minimum
22 tax is not imposed on a corporation;

23 ▶ for taxable years beginning on or after January 1, 2006, allows a taxpayer to elect to
24 calculate the apportionment of business income on the basis of a fraction that
25 increases the weighting of the sales factor;

26 ▶ provides that a taxpayer making such an election may not revoke the election for a
27 period of five taxable years;



- 28 ▶ grants rulemaking authority to the State Tax Commission;
- 29 ▶ addresses the State Tax Commission's authority to make adjustments in the
- 30 accounting, allocation, or apportionment of income; and
- 31 ▶ makes technical changes.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill takes effect for taxable years beginning on or after January 1, 2006.

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **59-7-104**, as repealed and reenacted by Chapter 169, Laws of Utah 1993
- 39 **59-7-201**, as last amended by Chapter 169, Laws of Utah 1993
- 40 **59-7-311**, as renumbered and amended by Chapter 2, Laws of Utah 1987
- 41 **59-7-320**, as last amended by Chapter 83, Laws of Utah 1994
- 42 **59-7-401**, as enacted by Chapter 169, Laws of Utah 1993
- 43 **59-7-801**, as enacted by Chapter 178, Laws of Utah 1994



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

46 Section 1. Section **59-7-104** is amended to read:

47 **59-7-104. Tax -- Minimum tax.**

48 (1) Each domestic and foreign corporation, except those exempted under Section
49 59-7-102, shall pay an annual tax to the state based on its Utah taxable income for the taxable
50 year for the privilege of exercising its corporate franchise or for the privilege of doing business
51 in the state.

52 (2) ~~[The] For purposes of Subsection (1), the tax [shall be 5% of a corporation's Utah~~
53 ~~taxable income.] rate is:~~

54 (a) for taxable years beginning on or after January 1, 1994, but beginning on or before
55 December 31, 2007, 5% of a corporation's Utah taxable income;

56 (b) for the taxable year beginning on or after January 1, 2008, but beginning on or
57 before December 31, 2008, 4% of a corporation's Utah taxable income;

58 (c) for the taxable year beginning on or after January 1, 2009, but beginning on or

59 before December 31, 2009, 3% of a corporation's Utah taxable income;

60 (d) for the taxable year beginning on or after January 1, 2010, but beginning on or
61 before December 31, 2010, 2% of a corporation's Utah taxable income;

62 (e) for the taxable year beginning on or after January 1, 2011, but beginning on or
63 before December 31, 2011, 1% of a corporation's Utah taxable income; and

64 (f) for taxable years beginning on or after January 1, 2012, a tax rate is not imposed on
65 a corporation's Utah taxable income.

66 (3) (a) ~~[The]~~ For taxable years beginning on or after January 1, 1994, but beginning on
67 or before December 31, 2011, the minimum tax a corporation shall pay under this [chapter is
68 \$100:] part is ~~Ĥ~~→ [\$250] \$100 ←~~Ĥ~~ .

69 (b) For taxable years beginning on or after January 1, 2012, a minimum tax is not
70 imposed on a corporation.

71 Section 2. Section **59-7-201** is amended to read:

72 **59-7-201. Tax -- Minimum tax.**

73 (1) There is imposed upon each corporation except those exempt under Section
74 59-7-102 for each taxable year, a tax upon its Utah taxable income derived from sources within
75 this state other than income for any period which the corporation is required to include in its
76 tax base under Section 59-7-104.

77 (2) ~~[The]~~ For purposes of Subsection (1), the tax [imposed by Subsection (1) shall be
78 5% of a corporation's Utah taxable income:] rate is:

79 (a) for taxable years beginning on or after January 1, 1984, but beginning on or before
80 December 31, 2007, 5% of a corporation's Utah taxable income;

81 (b) for the taxable year beginning on or after January 1, 2008, but beginning on or
82 before December 31, 2008, 4% of a corporation's Utah taxable income;

83 (c) for the taxable year beginning on or after January 1, 2009, but beginning on or
84 before December 31, 2009, 3% of a corporation's Utah taxable income;

85 (d) for the taxable year beginning on or after January 1, 2010, but beginning on or
86 before December 31, 2010, 2% of a corporation's Utah taxable income;

87 (e) for the taxable year beginning on or after January 1, 2011, but beginning on or
88 before December 31, 2011, 1% of a corporation's Utah taxable income; and

89 (f) for taxable years beginning on or after January 1, 2012, a tax rate is not imposed on

90 a corporation's Utah taxable income.

91 (3) (a) ~~[In no case shall the tax be less than \$100.]~~ For taxable years beginning on or
 92 after January 1, 1984, but beginning on or before December 31, 2011, the minimum tax a
 93 corporation shall pay under this part is ~~H~~→ [\$250] \$100 ←~~H~~ .

94 (b) For taxable years beginning on or after January 1, 2012, a minimum tax is not
 95 imposed on a corporation.

96 Section 3. Section **59-7-311** is amended to read:

97 **59-7-311. Method of apportionment of business income.**

98 (1) All business income shall be apportioned to this state by multiplying the business
 99 income by a fraction[;] calculated as provided in Subsection (2).

100 (2) The fraction described in Subsection (1) is calculated as follows:

101 (a) for a taxpayer that does not make an election authorized by Subsection (3):

102 (i) the numerator of [which is] the fraction is the sum of:

103 (A) the property factor [plus] as calculated under Section 59-7-312;

104 (B) the payroll factor [plus] as calculated under Section 59-7-315; and

105 (C) the sales factor[; and] as calculated under Section 59-7-317; and

106 (ii) the denominator of [which] the fraction is three[;]; and

107 (b) for a taxpayer that makes an election authorized by Subsection (3):

108 (i) the numerator of the fraction is the sum of:

109 (A) the property factor as calculated under Section 59-7-312;

110 (B) the payroll factor as calculated under Section 59-7-315; and

111 (C) the product of:

112 (I) the sales factor as calculated under Section 59-7-317; and

113 (II) two; and

114 (ii) the denominator of the fraction is four.

115 (3) (a) For purposes of Subsection (2) and subject to Subsection (3)(b), for taxable
 116 years beginning on or after January 1, 2006, a taxpayer may elect to calculate the fraction for
 117 apportioning business income under this section in accordance with Subsection (2)(b).

118 (b) If a taxpayer makes the election described in Subsection (3)(a), the taxpayer may
 119 not revoke the election for a period of five taxable years.

120 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

121 commission may make rules providing procedures for a taxpayer to make the election
122 described in Subsection (3)(a).

123 Section 4. Section **59-7-320** is amended to read:

124 **59-7-320. Equitable adjustment of standard allocation or apportionment.**

125 [~~H~~] Notwithstanding any other provision of this part, if the allocation and
126 apportionment provisions of this [~~chapter~~] part do not fairly represent the extent of the
127 taxpayer's business activity in this state, the taxpayer may petition for or the commission may
128 require, in respect to all or any part of the taxpayer's business activity, if reasonable:

129 (1) separate accounting;

130 (2) the exclusion of any one or more of the factors;

131 (3) the inclusion of one or more additional factors which will fairly represent the
132 taxpayer's business activity in this state; or

133 (4) the employment of any other method to effectuate an equitable allocation and
134 apportionment of the taxpayer's income.

135 Section 5. Section **59-7-401** is amended to read:

136 **59-7-401. Determining threshold level of business activity for corporations**
137 **organized or incorporated outside of the United States.**

138 (1) Except as provided in Subsection (2), in determining whether a corporation is a
139 foreign operating company or has met the threshold level of business activity, business activity
140 within and without the United States shall be measured by means of the factors ordinarily
141 applicable under Sections 59-7-312 through 59-7-319.

142 (2) (a) Any taxpayer who would ordinarily be required to apportion business income
143 [~~by means of the three-factor formula~~] in accordance with Part 3, Allocation and
144 Apportionment of Income -- Utah UDITPA Provisions, shall use a two-factor formula of
145 property and payroll.

146 (b) The results of the property and payroll factor computation shall be divided by two,
147 or by one if either the property or payroll factor has a denominator of zero.

148 Section 6. Section **59-7-801** is amended to read:

149 **59-7-801. Definitions.**

150 For purposes of this part:

151 (1) "Unrelated business income" means unrelated business income as determined under

152 Section 512, Internal Revenue Code.

153 (2) "Utah unrelated business income" means the unrelated business income
154 apportioned to Utah [~~by the apportionment method provided~~] in accordance with Part 3 [~~of this~~
155 ~~chapter~~]. Allocation and Apportionment of Income -- Utah UDITPA Provisions.

156 Section 7. **Effective date.**

157 This bill takes effect for taxable years beginning on or after January 1, 2006.

Legislative Review Note

as of 1-17-05 11:50 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

AMENDED BILL

State Impact

Passage of this bill could result in a Uniform School Fund loss of \$7,000,000 in FY 2007. The loss will increase each year until the provisions are fully phased in. By the FY 2012 the revenue loss is expected to be as much as \$200,000,000.

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2006</u>	<u>FY 2007</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>
Uniform School Fund	\$0	\$0	\$0	(\$7,000,000)
TOTAL	\$0	\$0	\$0	(\$7,000,000)

Individual and Business Impact

Individuals who pay the minimum tax will experience an increase in tax liability. Those who currently pay Corporate Tax at 5 percent will see taxes decrease over time. Individuals will also be allowed to elect to change the apportionment calculation which should provide many with a tax decrease. There could be additional corporate investment as a result of passage of this bill.

Office of the Legislative Fiscal Analyst