

Senator Curtis S. Bramble proposes the following substitute bill:

TAX REVISIONS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

5	Gregory S. Bell	John W. Hickman	Darin G. Peterson
6	D. Chris Buttars	Lyle W. Hillyard	Howard A. Stephenson
7	Allen M. Christensen	Scott K. Jenkins	David L. Thomas
8	Dan R. Eastman	Sheldon L. Killpack	John L. Valentine
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10	Thomas V. Hatch	Mark B. Madsen	Carlene M. Walker
11	Parley G. Hellewell	L. Alma Mansell	

12

13 **LONG TITLE**

14 **General Description:**

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

17 **Highlighted Provisions:**

18 This bill:

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

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

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

26 ▶ for taxable years beginning on or after January 1, 2006, allows a taxpayer to elect to
27 calculate the apportionment of business income on the basis of a fraction that



28 increases the weighting of the sales factor;

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

31 ▶ grants rulemaking authority to the State Tax Commission;

32 ▶ addresses the State Tax Commission's authority to make adjustments in the
33 accounting, allocation, or apportionment of income; and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

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

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **59-7-104**, as repealed and reenacted by Chapter 169, Laws of Utah 1993

42 **59-7-201**, as last amended by Chapter 169, Laws of Utah 1993

43 **59-7-311**, as renumbered and amended by Chapter 2, Laws of Utah 1987

44 **59-7-320**, as last amended by Chapter 83, Laws of Utah 1994

45 **59-7-401**, as enacted by Chapter 169, Laws of Utah 1993

46 **59-7-801**, as enacted by Chapter 178, Laws of Utah 1994



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

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

50 **59-7-104. Tax -- Minimum tax.**

51 (1) Each domestic and foreign corporation, except those exempted under Section
52 59-7-102, shall pay an annual tax to the state based on its Utah taxable income for the taxable
53 year for the privilege of exercising its corporate franchise or for the privilege of doing business
54 in the state.

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

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

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

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

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

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

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

69 (3) (a) ~~[The]~~ For taxable years beginning on or after January 1, 1994, but beginning on
70 or before December 31, 2011, the minimum tax a corporation shall pay under this ~~[chapter]~~
71 part is \$100.

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

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

75 **59-7-201. Tax -- Minimum tax.**

76 (1) There is imposed upon each corporation except those exempt under Section
77 59-7-102 for each taxable year, a tax upon its Utah taxable income derived from sources within
78 this state other than income for any period which the corporation is required to include in its
79 tax base under Section 59-7-104.

80 (2) ~~[The]~~ For purposes of Subsection (1), the tax [imposed by Subsection (1) shall be
81 5% of a corporation's Utah taxable income.] rate is:

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

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

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

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

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

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

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

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

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

100 **59-7-311. Method of apportionment of business income.**

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

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

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

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

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

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

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

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

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

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

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

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

114 (C) the product of:

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

116 (II) two; and

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

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

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

123 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
124 commission may make rules providing procedures for a taxpayer to make the election
125 described in Subsection (3)(a).

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

127 **59-7-320. Equitable adjustment of standard allocation or apportionment.**

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

132 (1) separate accounting;

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

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

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

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

139 **59-7-401. Determining threshold level of business activity for corporations**
140 **organized or incorporated outside of the United States.**

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

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

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

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

152 **59-7-801. Definitions.**

153 For purposes of this part:

154 (1) "Unrelated business income" means unrelated business income as determined under
155 Section 512, Internal Revenue Code.

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

159 Section 7. **Effective date.**

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

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 FY 2012 the revenue loss is expected to be as much as \$210,000,000.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</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