

1 **APPORTIONMENT OF BUSINESS INCOME TO**
2 **UTAH**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne A. Harper**

6 Senate Sponsor: _____

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Corporate Franchise and Income Taxes chapter relating to the
11 apportionment of business income.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ allows a taxpayer to elect for a one taxable year period to calculate the
15 apportionment of business income on the basis of a fraction that double weights the
16 sales factor;

17 ▶ allows a taxpayer to elect for taxable years beginning on or after January 1, 2007, to
18 calculate the apportionment of business income on the basis of a single sales factor;

19 ▶ addresses a taxpayer's ability to ~~H→~~ make or ~~←H~~ revoke an election to use a particular
19a method for

20 apportioning business income to the state;

21 ▶ addresses ~~H→~~ [~~the apportionment of business income if an amount is carried forward or~~
22 ~~carried back~~] a taxpayer's ability to carry forward or carry back an amount under the

22a Corporate Franchise and Income Taxes chapter ~~←H~~ ;

23 ▶ grants rulemaking authority to the State Tax Commission; and

24 ▶ makes technical changes.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-7-311**, as last amended by Chapter 225, Laws of Utah 2005



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

34 Section 1. Section **59-7-311** is amended to read:

35 **59-7-311. Method of apportionment of business income.**

36 (1) ~~[AH]~~ For a taxable year, all business income shall be apportioned to this state by
37 multiplying the business income by a fraction calculated as provided in Subsection (2).

38 (2) The fraction described in Subsection (1) for a taxable year is calculated ~~[as follows]~~
39 using one of the following methods as provided in this section:

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

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

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

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

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

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

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

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

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

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

50 (C) the product of:

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

52 (II) two; and

53 (ii) the denominator of the fraction is four~~[-];~~ and

54 (c) for a taxpayer that makes an election authorized by Subsection (4):

55 (i) the numerator of the fraction is the sales factor as calculated under Section

56 59-7-317; and

57 (ii) the denominator of the fraction is one.

58 (3) (a) For purposes of Subsection (2) and subject to Subsection (3)(b), for the taxable

59 [years] year beginning on or after January 1, 2006, but beginning on or before December 31,
 60 2006, a taxpayer may elect to calculate the fraction for apportioning business income under this
 61 section in accordance with the method described in Subsection (2)(b).

62 (b) (i) If a taxpayer makes the election described in Subsection (3)(a), the ~~H~~→ :

62a (A) election shall be made on or before the due date for filing the return for the taxable
 62b year, including extensions; and

62c (B) ←H taxpayer may

63 not revoke the election for [a period of five taxable years] that taxable year.

64 (ii) H→ [Subject to Subsection (3)(b)(i), if for a taxable year a taxpayer carries forward or
 65 carries back any amount under this chapter, the taxpayer shall calculate the fraction for
 66 apportioning business income under this section using the same method described in
 67 Subsection (2) that the taxpayer used for the taxable year that the taxpayer earned or incurred
 68 the amount that is carried forward or carried back.] If a taxpayer is allowed to carry forward or
 68a carry back an amount under any other provision of this chapter, the taxpayer may carry
 68b forward or carry back that amount only if the taxpayer's business income for the taxable year
 68c to which the amount is carried forward or carried back is calculated using the same method
 68d described in Subsection (2) that the taxpayer uses to calculate the amount that the taxpayer
 68e seeks to carry forward or carry back.

69 ~~[(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the~~
 70 ~~commission may make rules providing procedures for a taxpayer to make the election~~
 71 ~~described in Subsection (3)(a).] ←H~~

72 (4) (a) For purposes of Subsection (2) and subject to Subsection (4)(b), for taxable
 73 years beginning on or after January 1, 2007, a taxpayer may elect to calculate the fraction for
 74 apportioning business income under this section in accordance with the method described in
 75 Subsection (2)(c).

76 (b) (i) If a taxpayer makes the election described in Subsection (4)(a), the ~~H~~→ :

76a (A) election shall be made on or before the due date for filing the return for the taxable
 76b year, including extensions; and

76c (B) ←H taxpayer may

77 not revoke the election for a period of five taxable years.

78 (ii) H→ [Subject to Subsection (4)(b)(i), if for a taxable year a taxpayer carries forward or
 79 carries back any amount under this chapter, the taxpayer shall calculate the fraction for
 80 apportioning business income under this section using the same method described in
 81 Subsection (2) that the taxpayer used for the taxable year that the taxpayer earned or incurred
 82 the amount that is carried forward or carried back.] If a taxpayer is allowed to carry forward or
 82a carry back an amount under any other provision of this chapter, the taxpayer may carry
 82b forward or carry back that amount only if the taxpayer's business income for the taxable

82c year to which the amount is carried forward or carried back is calculated using the same
82d method described in Subsection (2) that the taxpayer uses to calculate the amount that the
82e taxpayer seeks to carry forward or carry back.

83 ~~[(c)] (5) ←H~~ In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
83a Act, the

84 commission may make rules ~~H→~~ :

84a (a) ←H providing procedures for a taxpayer to make the election
85 described in ~~H→~~ :

85a (i) Subsection (3)(a); or

85b (ii) ←H Subsection (4)(a) H→ [c] ; or

85c (b) to administer this section. ←H

Legislative Review Note

as of 11-16-05 7:00 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

Interim Committee Note

as of 12-20-05 9:59 AM

The Revenue and Taxation Interim Committee recommended this bill.

Mixed Membership Committee Note

as of 12-20-05 9:59 AM

The Tax Reform Task Force recommended this bill.

Membership: 13 legislators 2 non-legislators

Legislative Vote: 8 voting for 0 voting against 5 absent

State Impact

Passage of this bill could reduce the Uniform School Fund by \$13,000,000 in FY 2007 and by \$31,000,000 in FY 2008. The Tax Commission would require an appropriation of \$43,500 in FY 2007 to implement the provisions of the bill.

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2007</u>	<u>FY 2008</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>
Uniform School Fund	\$43,500	\$0	(\$13,000,000)	(\$31,000,000)
TOTAL	\$43,500	\$0	(\$13,000,000)	(\$31,000,000)

Individual and Business Impact

Business impact would be dependent on current tax liability.
