

Representative Wayne A. Harper proposes the following substitute bill:

1 **CORPORATE FRANCHISE AND INCOME TAXES -**
2 **APPORTIONMENT OF BUSINESS INCOME TO UTAH**
3 **AND DEDUCTION OF NET LOSSES BY A UNITARY GROUP**

4 2006 GENERAL SESSION

5 STATE OF UTAH

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

7 Senate Sponsor: Curtis S. Bramble

9 **LONG TITLE**

10 **General Description:**

11 This bill amends the Corporate Franchise and Income Taxes chapter relating to the
12 apportionment of business income and deduction of net losses by a unitary group.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ allows a taxpayer to elect to apportion business income to the state on the basis of a
16 formula that weights the sales factor more heavily than the income or payroll
17 factors;

18 ▶ addresses a taxpayer's ability to make or revoke an election to use a particular
19 method for apportioning business income to the state;

20 ▶ addresses a taxpayer's ability to carry forward or carry back an amount under the
21 Corporate Franchise and Income Taxes chapter;

22 ▶ addresses the ability of a unitary group to deduct a net loss of an acquired
23 corporation if the unitary group uses an apportionment method different than the
24 apportionment method used by the acquired corporation prior to the date of
25 acquisition;



- 26 ▶ grants rulemaking authority to the State Tax Commission; and
- 27 ▶ makes technical changes.

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **59-7-110**, as last amended by Chapter 83, Laws of Utah 1994

35 **59-7-311**, as last amended by Chapter 225, Laws of Utah 2005



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

38 Section 1. Section **59-7-110** is amended to read:

39 **59-7-110. Utah net losses -- Carryforwards and carrybacks.**

40 (1) The amount of Utah net loss which shall be carried back or forward to offset
41 income of another taxable year shall be determined as provided in this section.

42 (2) (a) A Utah net loss from a taxable year beginning before January 1, 1994, shall be
43 carried back three taxable years preceding the taxable year of the loss and any remaining loss
44 shall be carried forward five taxable years following the taxable year of the loss, subject to the
45 limitations of this section.

46 (b) A Utah net loss from a taxable year beginning on or after January 1, 1994, may be
47 carried back three taxable years preceding the taxable year of the loss and carried forward 15
48 taxable years following the taxable year of the loss, subject to the limitations of this section. If
49 an election is made to forego the federal net operating loss carryback, the Utah net loss is not
50 eligible to be carried back unless an election is made for state purposes.

51 (3) The Utah net loss shall be carried to the earliest eligible year for which the Utah
52 taxable income before net loss deduction, minus Utah net losses from previous years which
53 were applied or required to be applied to offset income, is not less than zero.

54 (4) (a) Except as provided in Subsection (4)(a)(iii), the amount of Utah net loss which
55 shall be carried to the year identified in Subsection (3) shall be the lesser of:

56 (i) the remaining Utah net loss after deduction of any amounts of such loss which were

57 carried to previous years; or

58 (ii) the remaining Utah taxable income before net loss deduction of the year identified
59 in Subsection (3) after deduction of Utah net losses from previous years which were carried or
60 required to be carried to such year; and

61 (iii) in any event, the amount carried back from a taxable year beginning on or after
62 January 1, 1994, may not exceed \$1,000,000 in Utah taxable income for each corporate return
63 filed in a taxable year; any losses in excess of \$1,000,000 may be carried forward; and

64 (b) any remaining Utah net loss shall be available to be carried to one or more taxable
65 years in accordance with this section.

66 (5) (a) Corporations acquiring the assets or stock of another corporation may not
67 deduct any net loss incurred by the acquired corporation prior to the date of acquisition. This
68 subsection does not apply if the only change in the corporation is that of the state of
69 incorporation.

70 (b) An acquired corporation may deduct its net losses incurred before the date of
71 acquisition against its separate income if the acquired corporation has continued to carry on a
72 trade or business substantially the same as that conducted before such acquisition.

73 (c) (i) Notwithstanding Subsection 59-7-311(4)(b), a unitary group may deduct the net
74 losses of an acquired corporation described in Subsection (5)(b) as provided in Subsection
75 (5)(c)(ii) if:

76 (A) the acquired corporation described in Subsection (5)(b) is included on a combined
77 report as part of the unitary group; and

78 (B) the unitary group elects under Section 59-7-311 to calculate the fraction for
79 apportioning business income to this state using a method that is different than the method used
80 by the acquired corporation prior to the date of acquisition.

81 (ii) If the requirements of Subsection (5)(c)(i) are met, a unitary group may deduct the
82 net losses of an acquired corporation described in Subsection (5)(b) against the lesser of:

83 (A) the separate income of the acquired corporation calculated using the method of
84 apportioning business income to this state under Section 59-7-311 that the acquired corporation
85 used on the date the net losses were incurred; or

86 (B) the separate income of the acquired corporation calculated using the method of
87 apportioning business income to this state under Section 59-7-311 that the unitary group uses

88 for the current taxable year.

89 Section 2. Section **59-7-311** is amended to read:

90 **59-7-311. Method of apportionment of business income.**

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

93 ~~[(2) The fraction described in Subsection (1) is calculated as follows:]~~

94 (2) Subject to the other provisions of this section, a taxpayer shall elect to calculate the
95 fraction for apportioning business income under this section for a taxable year using:

96 (a) the method described in Subsection (3)(a); or

97 (b) the method described in Subsection (3)(b) that is allowed for the taxable year.

98 (3) The following methods apply to Subsection (2):

99 (a) for any taxable year, a taxpayer ~~[that does not make an election authorized by~~
100 Subsection (3)] may elect to calculate the fraction for apportioning business income as follows:

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

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

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

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

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

106 ~~[(b) for a taxpayer that makes an election authorized by Subsection (3):]~~

107 (b) (i) for the taxable year beginning on or after January 1, 2006, but beginning on or
108 before December 31, 2006, a taxpayer may elect to calculate the fraction for apportioning
109 business income as follows:

110 ~~[(i)]~~ (A) the numerator of the fraction is the sum of:

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

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

113 ~~[(C)]~~ (III) the product of:

114 ~~[(Aa)]~~ (Aa) the sales factor as calculated under Section 59-7-317; and

115 ~~[(Bb)]~~ (Bb) two; and

116 ~~[(ii)]~~ (B) the denominator of the fraction is four[-];

117 (ii) for the taxable year beginning on or after January 1, 2007, but beginning on or
118 before December 31, 2007, a taxpayer may elect to calculate the fraction for apportioning

119 business income as follows:

120 (A) the numerator of the fraction is the sum of:

121 (I) the property factor as calculated under Section 59-7-312;

122 (II) the payroll factor as calculated under Section 59-7-315; and

123 (III) the product of:

124 (Aa) the sales factor as calculated under Section 59-7-317; and

125 (Bb) four; and

126 (B) the denominator of the fraction is six;

127 (iii) for the taxable year beginning on or after January 1, 2008, but beginning on or

128 before December 31, 2008, a taxpayer may elect to calculate the fraction for apportioning

129 business income as follows:

130 (A) the numerator of the fraction is the sum of:

131 (I) the property factor as calculated under Section 59-7-312;

132 (II) the payroll factor as calculated under Section 59-7-315; and

133 (III) the product of:

134 (Aa) the sales factor as calculated under Section 59-7-317; and

135 (Bb) ten; and

136 (B) the denominator of the fraction is 12; and

137 (iv) for taxable years beginning on or after January 1, 2009, a taxpayer may elect to

138 calculate the fraction for apportioning business income as follows:

139 (A) the numerator of the fraction is the sales factor as calculated under Section

140 59-7-317; and

141 (B) the denominator of the fraction is one.

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

145 ~~[(b)]~~ (4) (a) If a taxpayer [makes the election] elects to calculate the fraction for
146 apportioning business income using a method described in Subsection (3)[(a)] (b), the:

147 (i) election shall be made on or before the due date for filing the return for the taxable
148 year, including extensions; and

149 (ii) (A) for an election made in accordance with Subsections (3)(b)(i) through (iii), a

150 taxpayer may not revoke the election for that taxable year; or

151 (B) for an election made in accordance with Subsection (3)(b)(iv), a taxpayer may not
152 revoke the election for a period of five taxable years.

153 (b) If a taxpayer is allowed to carry forward or carry back an amount under any other
154 provision of this chapter, the taxpayer may carry forward or carry back that amount only if the
155 taxpayer's business income for the taxable year to which the amount is carried forward or
156 carried back is calculated using the same method described in Subsection (3) that the taxpayer
157 uses to calculate the amount that the taxpayer seeks to carry forward or carry back.

158 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
159 commission may make rules:

160 (i) providing procedures for a taxpayer to make [~~the~~] an election described in
161 Subsection (3)[~~(a)~~]; or

162 (ii) to administer this section.