

Representative Wayne A. Harper proposes the following substitute bill:

APPORTIONMENT OF BUSINESS INCOME

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines "qualifying transportation taxpayer";
- ▶ allows a qualifying transportation taxpayer to elect to apportion business income to the state on the basis of a formula that weights the sales factor more heavily than the property or payroll factors;
- ▶ addresses a taxpayer's ability to make or revoke an election to use a particular method for apportioning business income to the state; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for taxable years beginning on or after January 1, 2008.

This bill coordinates with S.B. 136, Apportionment of Business Income and Deduction



26 of Net Losses by an Acquired Corporation, by modifying substantive language.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **59-7-302**, as last amended by Laws of Utah 1993, Chapter 169

30 **59-7-311**, as last amended by Laws of Utah 2005, Chapter 225



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

32 Section 1. Section **59-7-302** is amended to read:

33 **59-7-302. Definitions.**

34 As used in this part, unless the context otherwise requires:

35 (1) "Business income" means income arising from transactions and activity in the
36 regular course of the taxpayer's trade or business and includes income from tangible and
37 intangible property if the acquisition, management, and disposition of the property constitutes
38 integral parts of the taxpayer's regular trade or business operations.

39 (2) "Commercial domicile" means the principal place from which the trade or business
40 of the taxpayer is directed or managed.

41 (3) "Compensation" means wages, salaries, commissions, and any other form of
42 remuneration paid to employees for personal services.

43 (4) "Nonbusiness income" means all income other than business income.

44 (5) "Qualifying transportation taxpayer" means a taxpayer that is an establishment
45 described in Sector 48 of the 2007 North American Industry Classification System of the
46 federal Executive Office of the President, Office of Management and Budget.

47 [~~5~~] (6) "Sales" means all gross receipts of the taxpayer not allocated under Sections
48 59-7-306 through 59-7-310.

49 [(6)] (7) "State" means any state of the United States, the District of Columbia, the
50 Commonwealth of Puerto Rico, any territory or possession of the United States, and any
51 foreign country or political subdivision thereof.

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

53 **59-7-311. Method of apportionment of business income.**

54 (1) [~~AH~~] For a taxable year, all business income shall be apportioned to this state by
55 multiplying the business income by a fraction calculated as provided in Subsection (2).
56

57 ~~[(2) The fraction described in Subsection (1) is calculated as follows:]~~
58 ~~[(a) for a taxpayer that does not make an election authorized by Subsection (3):]~~
59 (2) (a) Subject to the other provisions of this section, and except for a qualifying
60 transportation taxpayer, a taxpayer shall elect to calculate the fraction for apportioning business
61 income to this state under this section for a taxable year using:
62 (i) the method described in Subsection (3)(a); or
63 (ii) the method described in Subsection (3)(b).
64 (b) Subject to the other provisions of this section, a qualifying transportation taxpayer
65 shall elect to calculate the fraction for apportioning business income to this state under this
66 section for a taxable year using:
67 (i) the method described in Subsection (3)(a); or
68 (ii) the method described in Subsection (3)(c) in effect for the taxable year.
69 (3) For purposes of Subsection (2):
70 (a) subject to Subsection (4) or (5), a taxpayer, including a qualifying transportation
71 taxpayer, may elect to calculate the fraction for apportioning business income as follows:
72 (i) the numerator of the fraction is the sum of:
73 (A) the property factor as calculated under Section 59-7-312;
74 (B) the payroll factor as calculated under Section 59-7-315; and
75 (C) the sales factor as calculated under Section 59-7-317; and
76 (ii) the denominator of the fraction is three; ~~and~~
77 ~~[(b) for a taxpayer that makes an election authorized by Subsection (3):]~~
78 (b) subject to Subsection (4), for a taxable year beginning on or after January 1, 2006, a
79 taxpayer except for a qualifying transportation taxpayer may elect to calculate the fraction for
80 apportioning business income as follows:
81 (i) the numerator of the fraction is the sum of:
82 (A) the property factor as calculated under Section 59-7-312;
83 (B) the payroll factor as calculated under Section 59-7-315; and
84 (C) the product of:
85 (I) the sales factor as calculated under Section 59-7-317; and
86 (II) two; and
87 (ii) the denominator of the fraction is four[-]; or

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

91 ~~[(b) If a taxpayer makes the election described in Subsection (3)(a), the taxpayer may~~
92 ~~not revoke the election for a period of five taxable years.]~~

93 (c) subject to Subsection (5):

94 (i) for taxable years beginning on or after January 1, 2006, but beginning on or before
95 December 31, 2008, a qualifying transportation taxpayer may elect to calculate the fraction for
96 apportioning business income as follows:

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

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

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

100 (III) the product of:

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

102 (Bb) two; and

103 (B) the denominator of the fraction is four; or

104 (ii) for taxable years beginning on or after January 1, 2009, a qualifying transportation
105 taxpayer may elect to calculate the fraction for apportioning business income as follows:

106 (A) the numerator of the fraction is the sales factor as calculated under Section
107 59-7-317; and

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

109 (4) (a) If a taxpayer except for a qualifying transportation taxpayer elects to calculate
110 the fraction for apportioning business income to this state using the method described in
111 Subsection (3)(b):

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

114 (ii) (A) if the taxpayer makes the election to apportion business income to this state
115 using the method described in Subsection (3)(b) beginning with a taxable year that begins on or
116 after January 1, 2006, but begins on or before December 31, 2007, the taxpayer may revoke the
117 election as provided in Subsection (4)(b); or

118 (B) except as provided in Subsection (6), if the taxpayer elects to apportion business

119 income to this state using the method described in Subsection (3)(b) beginning with a taxable
120 year that begins on or after January 1, 2008, the taxpayer may not revoke that election.

121 (b) (i) A taxpayer except for a qualifying transportation taxpayer that revokes an
122 election under Subsection (4)(a)(ii)(A) shall make the revocation:

123 (A) for the taxable year beginning on or after January 1, 2008, but beginning on or
124 before December 31, 2008; and

125 (B) on or before the due date for filing the return for the taxable year, including
126 extensions.

127 (ii) A taxpayer except for a qualifying transportation taxpayer that revokes an election
128 under Subsection (4)(a)(ii)(A):

129 (A) for the taxable year beginning on or after January 1, 2008, but beginning on or
130 before December 31, 2008, shall apportion business income to this state using the fraction
131 described in Subsection (3)(a); and

132 (B) for a taxable year beginning on or after January 1, 2009:

133 (I) may apportion business income to this state using the fraction described in
134 Subsection (3)(a); or

135 (II) subject to Subsection (4)(b)(iii), may elect to apportion business income to this
136 state using the method described in Subsection (3)(b).

137 (iii) For purposes of Subsection (4)(b)(ii)(B)(II) and except as provided in Subsection
138 (6), if a taxpayer except for a qualifying transportation taxpayer elects to apportion business
139 income to this state using the method described in Subsection (3)(b), the taxpayer may not
140 revoke that election.

141 (5) (a) If a qualifying transportation taxpayer elects to calculate the fraction for
142 apportioning business income to this state using a method described in Subsection (3)(c):

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

145 (ii) (A) if the qualifying transportation taxpayer makes the election to apportion
146 business income to this state using the method described in Subsection (3)(c)(i):

147 (I) beginning with a taxable year that begins on or after January 1, 2006, but begins on
148 or before December 31, 2007, the qualifying transportation taxpayer may revoke the election as
149 provided in Subsection (5)(b); or

150 (II) except as provided in Subsection (6), beginning with the taxable year that begins
151 on or after January 1, 2008, but begins on or before December 31, 2008, the qualifying
152 transportation taxpayer may not revoke that election; or

153 (B) except as provided in Subsection (6), if the qualifying transportation taxpayer
154 makes the election to apportion business income to this state using the method described in
155 Subsection (3)(c)(ii) beginning with a taxable year that begins on or after January 1, 2009, the
156 qualifying transportation taxpayer may not revoke that election.

157 (b) (i) A qualifying transportation taxpayer that revokes an election under Subsection
158 (5)(a)(ii)(A)(I) shall make the revocation:

159 (A) for the taxable year beginning on or after January 1, 2008, but beginning on or
160 before December 31, 2008; and

161 (B) on or before the due date for filing the return for the taxable year, including
162 extensions.

163 (ii) A qualifying transportation taxpayer that revokes an election under Subsection
164 (5)(a)(ii)(A)(I):

165 (A) for the taxable year beginning on or after January 1, 2008, but beginning on or
166 before December 31, 2008, shall apportion business income to this state using the fraction
167 described in Subsection (3)(a); and

168 (B) for a taxable year beginning on or after January 1, 2009:

169 (I) may apportion business income to this state using the fraction described in
170 Subsection (3)(a); or

171 (II) subject to Subsection (5)(b)(iii), may elect to apportion business income to this
172 state using the method described in Subsection (3)(c)(ii).

173 (iii) For purposes of Subsection (5)(b)(ii)(B)(II) and except as provided in Subsection
174 (6), if a qualifying transportation taxpayer elects to apportion business income to this state
175 using the method described in Subsection (3)(c)(ii), the qualifying transportation taxpayer may
176 not revoke that election.

177 (6) (a) If a taxpayer, including a qualifying transportation taxpayer, shows good cause,
178 the commission may allow the taxpayer to revoke an election made in accordance with
179 Subsection (3)(b) or (c).

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

181 commission may make rules prescribing the circumstances under which a taxpayer, including a
182 qualifying transportation taxpayer, may revoke an election made in accordance with Subsection
183 (3)(b) or (c).

184 ~~[(c)]~~ (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
185 Act, the commission may make rules:

186 (a) providing procedures for a taxpayer, including a qualifying transportation taxpayer,
187 to make ~~the~~ an election described in Subsection (3)~~[(a)]~~; or

188 (b) to administer this section.

189 Section 3. **Retrospective operation.**

190 This bill has retrospective operation for taxable years beginning on or after January 1,
191 2008.

192 Section 4. **Coordinating S.B. 28 with S.B. 136 -- Modifying substantive language.**

193 If this S.B. 28 and S.B. 136, Apportionment of Business Income and Deduction of Net
194 Losses by an Acquired Corporation, both pass, it is the intent of the Legislature that the Office
195 of Legislative Research and General Counsel, in preparing the Utah Code database for
196 publication:

197 (1) modify Subsection 59-7-110(6)(a) in S.B. 136 to read:

198 "(a) subject to Subsection (6)(e), calculating the sum of:

199 (i) subject to Subsection (6)(f), an amount determined by dividing the average value of
200 the acquired corporation's real and tangible personal property owned or rented and used in this
201 state during the taxable year by the average value of all of the unitary group's real and tangible
202 personal property owned or rented and used during that taxable year;

203 (ii) subject to Subsection (6)(f), an amount determined by dividing the total amount
204 paid in this state during the taxable year by the acquired corporation for compensation by the
205 total compensation paid everywhere by the unitary group during the taxable year; and

206 (iii) an amount determined by:

207 (A) dividing the total sales of the acquired corporation in this state during the taxable
208 year by the total sales of the unitary group everywhere during the taxable year; and

209 (B) if the unitary group elects to apportion business income to this state using the
210 method described in Subsection 59-7-311(3)(b) or (3)(c)(i), multiplying the amount calculated
211 under Subsection (6)(a)(iii)(A) by two;"; and

212 (2) insert the following language as a new Subsection 59-7-110(6)(f) in S.B. 136:
213 "(f) If a unitary group elects to apportion business income to this state using the
214 method described in Subsection 59-7-311(3)(c)(ii), the amounts determined under Subsections
215 (6)(a)(i) and (ii) shall be zero."