

APPORTIONMENT OF BUSINESS INCOME

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: John Dougall

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ for purposes of apportionment of business income, addresses the circumstances under which certain receipts, rents, royalties, or sales are considered to be in this state;
- ▶ addresses the apportionment of business income for purposes of the individual income tax; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect for taxable years beginning on or after January 1, 2009.

Utah Code Sections Affected:

AMENDS:

59-7-319, as last amended by Laws of Utah 1992, Chapter 165

59-10-118, as last amended by Laws of Utah 1995, Chapter 311



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

Section 1. Section **59-7-319** is amended to read:

59-7-319. Receipt, rent, royalty, or sale in connection with other than tangible personal property -- When considered to be in this state.

~~[(1) Sales, other than sales of tangible personal property, are in this state if:]~~

~~[(a) the income-producing activity is performed in this state; or]~~

~~[(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.]~~

(1) (a) Subject to Subsection (1)(b), as used in this section, "regulated investment company" is as defined in Section 851(a), Internal Revenue Code, in effect for the taxable year.

(b) "Regulated investment company" includes a trustee or sponsor of an employee benefit plan that has an account in a regulated investment company.

(2) The following are considered to be in this state:

(a) a rent in connection with real property if the real property is in this state;

(b) a royalty in connection with real property if the real property is in this state;

(c) a sale in connection with real property if the real property is in this state; or

(d) other income in connection with real property if the real property is in this state.

(3) (a) Subject to Subsection (3)(b), a receipt from the performance of a service is considered to be in this state if:

(i) the purchaser of the service receives the benefit of the service in this state; or

(ii) the receipt is otherwise attributable to this state's marketplace.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule prescribe the circumstances under which:

(i) a purchaser of a service receives the benefit of the service in this state; or

(ii) a receipt is otherwise attributable to this state's marketplace.

(4) (a) Subject to Subsection (4)(b), a receipt in connection with intangible property is considered to be in this state if the intangible property is used in this state.

(b) If the intangible property described in Subsection (4)(a) is used in this state and outside this state, a receipt in connection with the intangible property shall be apportioned to

59 this state in accordance with Subsection (4)(c).

60 (c) For purposes of Subsection (4)(b), for a taxable year the percentage of a receipt in
 61 connection with intangible property that is considered to be in this state is the percentage of the
 62 use of the intangible property that occurs in this state during the taxable year.

63 ~~[(2)]~~ (5) (a) Notwithstanding [Subsection (1), sales, other than sales] Subsections (2)
 64 through (4), a sale, other than a sale of tangible personal property, derived, directly or
 65 indirectly, from the sale of management, distribution, or administration services to, or on behalf
 66 of a regulated investment company, [as defined in Section 851(a) of the Internal Revenue Code
 67 of 1986, including trustees or sponsors of employee benefit plans which have accounts in a
 68 regulated investment company, shall be assigned to] is considered to be in this state:

69 (i) to the extent that shareholders of the regulated investment company are domiciled in
 70 the state [as follows: (a) by multiplying]; and

71 (ii) as provided in this Subsection (5).

72 (b) For purposes of Subsection (5)(a), the amount of a sale, other than a sale of tangible
 73 personal property, that is considered to be in this state is calculated by determining the product
 74 of:

75 (i) the taxpayer's total dollar amount of sales of [such] the services [by]; and

76 (ii) a fraction, the numerator of which is the average of the sum of the beginning of the
 77 year and the end of year balance of shares owned by the investment company shareholders
 78 domiciled in this state[;] and the denominator of which is the average of the sum of the
 79 beginning of the year and end of year balance of shares owned by the investment company
 80 shareholders.

81 ~~[(b)]~~ (c) A separate computation shall be made to determine the sales for each
 82 investment company.

83 ~~[(3)]~~ (6) (a) Notwithstanding [Subsection (1)] Subsections (2) through (4) and subject
 84 to Subsection (6)(b), the following sales [shall be assigned to the] are considered to be in this
 85 state to the extent that customers of a securities brokerage business are domiciled in the state:

86 (i) [sales, other than sales] a sale, other than a sale of tangible personal property,
 87 derived, directly or indirectly, from the sale of a securities brokerage [services] service by a
 88 taxpayer [which in this state is] if that taxpayer is primarily engaged in providing [services] a
 89 service in this state to a regulated investment company [as described in Subsection (2)]; or

90 (ii) ~~[sales, other than sales]~~ a sale, other than a sale of tangible personal property,
 91 derived, directly or indirectly, from the sale of a securities brokerage ~~[services]~~ service by a
 92 taxpayer ~~[which]~~ that is an affiliate of a taxpayer ~~[which, in this state,]~~ that provides ~~[services]~~
 93 a service in this state to a regulated investment company ~~[as described in Subsection (2)].~~

94 ~~[(b) This assignment of sales shall be determined as follows: by multiplying]~~

95 (b) For purposes of Subsection (6)(a), the amount of a sale, other than a sale of tangible
 96 personal property, that is considered to be in this state is calculated by determining the product
 97 of:

98 (i) the taxpayer's total dollar amount of sales of securities brokerage services [by]; and

99 (ii) a fraction, the numerator of which is the receipts from securities brokerage
 100 services from customers of the taxpayer domiciled in this state, and the denominator of which
 101 is the receipts from securities brokerage services from all customers of the taxpayer.

102 Section 2. Section **59-10-118** is amended to read:

103 **59-10-118. Division of income for tax purposes.**

104 (1) As used in this section ~~[unless the context otherwise requires]:~~

105 (a) "Business income" means income arising from transactions and activity in the
 106 regular course of ~~[the]~~ a taxpayer's trade or business and includes income from tangible and
 107 intangible property if the acquisition, management, and disposition of the property constitutes
 108 integral parts of the taxpayer's regular trade or business operations.

109 (b) "Commercial domicile" means the principal place from which the trade or business
 110 of ~~[the]~~ a taxpayer is directed or managed.

111 ~~[(c) "Compensation" means wages, salaries, commissions, and any other form of~~
 112 ~~remuneration paid to employee for personal services.]~~

113 ~~[(d)]~~ (c) "Nonbusiness income" means all income other than business income.

114 ~~[(e)]~~ (d) "Sales" means all gross receipts of ~~[the]~~ a taxpayer not allocated under
 115 Subsections (3) through (7).

116 ~~[(f)]~~ (e) "State" means any state of the United States, the District of Columbia, the
 117 commonwealth of Puerto Rico, ~~[and]~~ or any possession of the United States.

118 (2) ~~[Any]~~ A taxpayer having business income ~~[which]~~ that is taxable both within and
 119 without this state, shall allocate and apportion ~~[his]~~ the taxpayer's net income as provided in
 120 this section.

121 (3) Rents and royalties from real or tangible personal property, capital gains, interest,
122 dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness
123 income, shall be allocated as provided in Subsections (4) through (7).

124 (4) (a) Net rents and royalties from real property located in this state are allocable to
125 this state.

126 (b) Net rents and royalties from tangible personal property are allocable to this state:

127 (i) if and to the extent that the property is utilized in this state; or

128 (ii) in their entirety if the taxpayer's commercial domicile is in this state and the
129 taxpayer is not organized under the laws of or taxable in the state in which the property is
130 utilized.

131 (c) The extent of utilization of tangible personal property in a state is determined by
132 multiplying the rents and royalties by a fraction, the numerator of which is the number of days
133 of physical location of the property in the state during the rental or royalty period in the taxable
134 year and the denominator of which is the number of days of physical location of the property
135 everywhere during all rental or royalty periods in the taxable year. If the physical location of
136 the property during the rental or royalty period is unknown or unascertainable by the taxpayer,
137 tangible personal property is utilized in the state in which the property was located at the time
138 the rental or royalty payer obtained possession.

139 (5) (a) Capital gains and losses from sales of real property located in this state are
140 allocable to this state.

141 (b) Capital gains and losses from sales of tangible personal property are allocable to
142 this state if:

143 (i) the property [~~had~~] has a situs in this state at the time of the sale; or

144 (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in
145 the state in which the property had a situs.

146 (c) Capital gains and losses from sales of intangible personal property are allocable to
147 this state if the taxpayer's commercial domicile is in this state.

148 (6) Interest and dividends are allocable to this state if the taxpayer's commercial
149 domicile is in this state.

150 (7) (a) Patent and copyright royalties are allocable to this state:

151 (i) if and to the extent that the patent or copyright is utilized by the payer in this state;

152 or

153 (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in
154 which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

155 (b) A patent is utilized in a state to the extent that it is employed in production,
156 fabrication, manufacturing, or other processing in the state or to the extent that a patented
157 product is produced in the state. If the basis of receipts from patent royalties does not permit
158 allocation to states or if the accounting procedures do not reflect states of utilization, the patent
159 is utilized in the state in which the taxpayer's commercial domicile is located.

160 (8) All business income shall be apportioned to this state [~~by multiplying the income~~
161 ~~by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales~~
162 ~~factor, and the denominator of which is three]~~ using the same methods, procedures, and
163 requirements of Sections 59-7-311 through 59-7-320.

164 [~~(9) The property factor is a fraction, the numerator of which is the average value of the~~
165 ~~taxpayer's real and tangible personal property owned or rented and used in this state during the~~
166 ~~tax period and the denominator of which is the average value of all the taxpayer's real and~~
167 ~~tangible personal property owned or rented and used during the tax period.]~~

168 [~~(10) Property owned by the taxpayer is valued at its original cost. Property rented by~~
169 ~~the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the~~
170 ~~annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from~~
171 ~~subrentals.]~~

172 [~~(11) The average value of property shall be determined by averaging the values at the~~
173 ~~beginning and ending of the tax period but the commission may require the averaging of~~
174 ~~monthly values during the tax period, if reasonably required to reflect properly the average~~
175 ~~value of the taxpayer's property.]~~

176 [~~(12) The payroll factor is a fraction, the numerator of which is the total amount paid in~~
177 ~~this state during the tax period by the taxpayer for compensation, and the denominator of which~~
178 ~~is the total compensation paid everywhere during the tax period.]~~

179 [~~(13) Compensation is paid in this state if:]~~

180 [~~(a) the individual's service is performed entirely within the state; or]~~

181 [~~(b) the individual's service is performed both within and without the state, but the~~
182 ~~service performed without the state is incidental to the individual's service within the state; or]~~

- 183 ~~[(c) some of the service is performed in the state and:]~~
184 ~~[(i) the base of operations or, if there is no base of operations, the place from which the~~
185 ~~service is directed or controlled is in the state; or]~~
186 ~~[(ii) the base of operations or the place from which the service is directed or controlled~~
187 ~~is not in any state in which some part of the service is performed, but the individual's residence~~
188 ~~is in this state.]~~
189 ~~[(14) The sales factor is a fraction, the numerator of which is the total sales of the~~
190 ~~taxpayer in this state during the tax period, and the denominator of which is the total sales of~~
191 ~~the taxpayer everywhere during the tax period.]~~
192 ~~[(15) Sales of tangible personal property are in this state if the property is delivered or~~
193 ~~shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of the~~
194 ~~sale.]~~
195 ~~[(16) Sales, other than sales of tangible personal property, are in this state if:]~~
196 ~~[(a) the income-producing activity is performed in this state; or]~~
197 ~~[(b) the income-producing activity is performed both in and outside this state and a~~
198 ~~greater proportion of the income-producing activity is performed in this state than in any other~~
199 ~~state, based on costs of performance.]~~
200 ~~[(17) If the allocation and apportionment provisions of this chapter do not fairly~~
201 ~~represent the extent of the taxpayer's business activity in this state, the taxpayer may petition~~
202 ~~for or the commission may require, in respect of all or any part of the taxpayer's business~~
203 ~~activity, if reasonable:]~~
204 ~~[(a) separate accounting;]~~
205 ~~[(b) the exclusion of any one or more of the factors;]~~
206 ~~[(c) the inclusion of one or more additional factors which will fairly represent the~~
207 ~~taxpayer's business activity in this state; or]~~
208 ~~[(d) the employment of any other method to effectuate an equitable allocation and~~
209 ~~apportionment of the taxpayer's income.]~~

210 **Section 3. Effective date.**

211 This bill takes effect for taxable years beginning on or after January 1, 2009.

Legislative Review Note
as of 1-16-08 6:45 AM

Office of Legislative Research and General Counsel

S.B. 136 - Apportionment of Business Income Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill is likely to be revenue neutral.

Individual, Business and/or Local Impact

Individuals or businesses in Utah that perform certain financial services out-of-state are likely to benefit, whereas individuals or businesses that reside elsewhere but perform certain financial services consumed in Utah are likely to see some increase in corporate or individual tax liability. Enactment of this bill is not expected to have any local impact.
