

1 **INCOME TAXATION - REAL ESTATE**  
2 **INVESTMENT TRUSTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne L. Niederhauser**

6 House Sponsor: \_\_\_\_\_  
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8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Corporate Franchise and Income Taxes chapter relating to real  
11 estate investment trusts.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ addresses the income taxation of a real estate investment trust or income from a real  
16 estate investment trust; and
- 17 ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill has retrospective operation for taxable years beginning on or after January 1,  
22 2008.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **59-7-101**, as last amended by Laws of Utah 2004, Chapter 54

26 **59-7-105**, as last amended by Laws of Utah 2007, Chapter 100

27 **59-7-106**, as last amended by Laws of Utah 2007, Chapter 100



28           **59-7-116.5**, as enacted by Laws of Utah 1995, Chapter 311  
29           **59-7-402**, as last amended by Laws of Utah 2004, Chapter 54  
30           **59-10-117**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2



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

33           Section 1. Section **59-7-101** is amended to read:

34           **59-7-101. Definitions.**

35           As used in this chapter:

36           (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105  
37 and 59-7-106.

38           (2) (a) "Affiliated group" means one or more chains of corporations that are connected  
39 through stock ownership with a common parent corporation that meet the following  
40 requirements:

41           (i) at least 80% of the stock of each of the corporations in the group, excluding the  
42 common parent corporation, is owned by one or more of the other corporations in the group;  
43 and

44           (ii) the common parent directly owns at least 80% of the stock of at least one of the  
45 corporations in the group.

46           (b) "Affiliated group" does not include corporations that are qualified to do business  
47 but are not otherwise doing business in this state.

48           (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which  
49 is limited and preferred as to dividends.

50           (3) "Apportionable income" means adjusted income less nonbusiness income net of  
51 related expenses, to the extent included in adjusted income.

52           (4) "Apportioned income" means apportionable income multiplied by the  
53 apportionment fraction as determined in Section 59-7-311.

54           (5) "Business income" is as defined in Section 59-7-302.

55           (6) (a) "Captive real estate investment trust" means a real estate investment trust if:

56           (i) the shares or beneficial interests of the real estate investment trust are not regularly  
57 traded on an established securities market; and

58           (ii) more than 50% of the voting power or value of the shares or beneficial interests of

59 the real estate investment trust are directly, indirectly, or constructively:

60 (A) owned by a controlling entity of the real estate investment trust; or

61 (B) controlled by a controlling entity of the real estate investment trust.

62 (b) "Captive real estate investment trust" does not include:

63 (i) a real estate investment trust, except for a captive real estate investment trust;

64 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal

65 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real

66 estate investment trust; or

67 (iii) a foreign real estate investment trust.

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

69 commission may make rules defining "established securities market."

70 (7) (a) "Controlling entity of a captive real estate investment trust" means an entity

71 that:

72 (i) is subject to Chapter 1, Subchapter C, Internal Revenue Code;

73 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue

74 Code; and

75 (iii) directly, indirectly, or constructively holds more than 50% of:

76 (A) the voting power of a captive real estate investment trust; or

77 (B) the value of the shares or beneficial interests of a captive real estate investment

78 trust.

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

80 commission may make rules defining "established securities market."

81 [~~(7)~~ (8) (a) "Common ownership" means the direct or indirect control or ownership of  
82 more than 50% of the outstanding voting stock of:

83 (i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue  
84 Code, except that 50% shall be substituted for 80%;

85 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue  
86 Code, except that 50% shall be substituted for 80%; or

87 (iii) three or more corporations each of which is a member of a group of corporations  
88 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

89 (A) a common parent corporation included in a group of corporations described in

90 Subsection (2)(a)(i); and

91 (B) included in a group of corporations described in Subsection (2)(a)(ii).

92 (b) Ownership of outstanding voting stock shall be determined by Section 1563,  
93 Internal Revenue Code.

94 ~~[(6)]~~ (9) "Corporate return" or "return" includes a combined report.

95 ~~[(8)]~~ (10) "Corporation" includes:

96 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue  
97 Code; and

98 (b) other organizations that are taxed as corporations for federal income tax purposes  
99 under the Internal Revenue Code.

100 ~~[(9)]~~ (11) "Dividend" means any distribution, including money or other type of  
101 property, made by a corporation to its shareholders out of its earnings or profits accumulated  
102 after December 31, 1930.

103 ~~[(10)]~~ (12) (a) "Doing business" includes any transaction in the course of its business  
104 by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate  
105 business in this state.

106 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:

107 (i) the right to do business through incorporation or qualification;

108 (ii) the owning, renting, or leasing of real or personal property within this state; and

109 (iii) the participation in joint ventures, working and operating agreements, the  
110 performance of which takes place in this state.

111 ~~[(11)]~~ (13) "Domestic corporation" means a corporation that is incorporated or  
112 organized under the laws of this state.

113 ~~[(12)]~~ (14) (a) "Farmers' cooperative" means an association, corporation, or other  
114 organization that is:

115 (i) (A) an association, corporation, or other organization of:

116 (I) farmers; or

117 (II) fruit growers; or

118 (B) an association, corporation, or other organization that is similar to an association,  
119 corporation, or organization described in Subsection ~~[(12)]~~ (14)(a)(i)(A); and

120 (ii) organized and operated on a cooperative basis to:

121 (A) (I) market the products of members of the cooperative or the products of other  
122 producers; and

123 (II) return to the members of the cooperative or other producers the proceeds of sales  
124 less necessary marketing expenses on the basis of the quantity of the products of a member or  
125 producer or the value of the products of a member or producer; or

126 (B) (I) purchase supplies and equipment for the use of members of the cooperative or  
127 other persons; and

128 (II) turn over the supplies and equipment described in Subsection [~~(12)~~]  
129 (14)(a)(ii)(B)(I) at actual costs plus necessary expenses to the members of the cooperative or  
130 other persons.

131 (b) (i) Subject to Subsection [~~(12)~~] (14)(b)(ii), for purposes of this Subsection [~~(12)~~]  
132 (14), the commission by rule, made in accordance with Title 63, Chapter 46a, Utah  
133 Administrative Rulemaking Act, shall define:

134 (A) the terms:

135 (I) "member"; and

136 (II) "producer"; and

137 (B) what constitutes an association, corporation, or other organization that is similar to  
138 an association, corporation, or organization described in Subsection [~~(12)~~] (14)(a)(i)(A).

139 (ii) The rules made under this Subsection [~~(12)~~] (14)(b) shall be consistent with the  
140 filing requirements under federal law for a farmers' cooperative.

141 [~~(13)~~] (15) "Foreign corporation" means a corporation that is not incorporated or  
142 organized under the laws of this state.

143 [~~(14)~~] (16) (a) "Foreign operating company" means a corporation that:

144 (i) is incorporated in the United States; and

145 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is  
146 conducted outside the United States.

147 (b) "Foreign operating company" does not include a corporation that qualifies for the  
148 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

149 (17) (a) "Foreign real estate investment trust" means a business entity organized  
150 outside the laws of the United States if:

151 (i) at least 75% of the business entity's total asset value at the close of the business

152 entity's taxable year is represented by:

153 (A) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

154 (B) cash or cash equivalents; or

155 (C) one or more securities issued or guaranteed by the United States;

156 (ii) the business entity is:

157 (A) not subject to federal income taxation on amounts distributed to the business

158 entity's beneficial owners; or

159 (B) exempt from federal income taxation on an entity level;

160 (iii) the business entity distributes at least 85% of the business entity's taxable income,

161 as computed in the jurisdiction in which the business entity is organized, to the holders of the

162 business entity's:

163 (A) shares or beneficial interests; and

164 (B) on an annual basis;

165 (iv) (A) not more than 10% of the following is held directly, indirectly, or

166 constructively by a single person:

167 (I) the voting power of the business entity; or

168 (II) the value of the shares or beneficial interests of the business entity; or

169 (B) the shares of the business entity are regularly traded on an established securities

170 market; and

171 (v) the business entity is organized in a country that has a tax treaty with the United

172 States.

173 (b) "Foreign real estate investment trust" includes a listed Australian property trust.

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

175 commission may make rules defining:

176 (i) "cash or cash equivalents";

177 (ii) "established securities market"; or

178 (iii) "listed Australian property trust."

179 ~~[(15)]~~ (18) "Income" includes losses.

180 ~~[(16)]~~ (19) "Internal Revenue Code" means Title 26 of the United States Code as

181 effective during the year in which Utah taxable income is determined.

182 ~~[(17)]~~ (20) "Nonbusiness income" is as defined in Section 59-7-302.

183            [(18)] (21) "Nonresident shareholder" means any shareholder of an S corporation who  
184 on the last day of the taxable year of the S corporation, is:

185            (a) an individual not domiciled in Utah; or

186            (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.

187            (22) "Real estate investment trust" is as defined in Section 856, Internal Revenue Code.

188            [(19)] (23) "Related expenses" means:

189            (a) expenses directly attributable to nonbusiness income; and

190            (b) the portion of interest or other expense indirectly attributable to both nonbusiness  
191 and business income which bears the same ratio to the aggregate amount of such interest or  
192 other expense, determined without regard to this Subsection [(19)] (23), as the average amount  
193 of the asset producing the nonbusiness income bears to the average amount of all assets of the  
194 taxpayer within the taxable year.

195            [(20)] (24) "Resident shareholder" means any shareholder of an S corporation who is  
196 not a nonresident shareholder.

197            [(22)] (25) "Safe harbor lease" means a lease that qualified as a safe harbor lease under  
198 Section 168, Internal Revenue Code.

199            [(21)] (26) "S corporation" means an S corporation as defined in Section 1361, Internal  
200 Revenue Code.

201            [(23)] (27) "State of the United States" includes any of the 50 states or the District of  
202 Columbia [~~and "United States" includes the 50 states and the District of Columbia~~].

203            [(24)] (28) (a) "Taxable year" means the calendar year or the fiscal year ending during  
204 such calendar year upon the basis of which the adjusted income is computed.

205            (b) In the case of a return made for a fractional part of a year under this chapter or  
206 under rules prescribed by the commission, "taxable year" includes the period for which such  
207 return is made.

208            [(25)] (29) "Taxpayer" means any corporation subject to the tax imposed by this  
209 chapter.

210            [(26)] (30) "Threshold level of business activity" means business activity in the United  
211 States equal to or greater than 20% of the corporation's total business activity as determined  
212 under Section 59-7-401.

213            [(27)] (31) "Unadjusted income" means federal taxable income as determined on a

214 separate return basis before intercompany eliminations as determined by the Internal Revenue  
215 Code, before the net operating loss deduction and special deductions for dividends received.

216 ~~[(28)]~~ (32) (a) "Unitary group" means a group of corporations that:

217 (i) are related through common ownership; and

218 (ii) by a preponderance of the evidence as determined by a court of competent  
219 jurisdiction or the commission, are economically interdependent with one another as  
220 demonstrated by the following factors:

221 (A) centralized management;

222 (B) functional integration; and

223 (C) economies of scale.

224 (b) "Unitary group" includes a captive real estate investment trust.

225 ~~[(b)]~~ (c) "Unitary group" does not include an S [corporations] corporation.

226 (33) "United States" includes the 50 states and the District of Columbia.

227 ~~[(29)]~~ (34) "Utah net loss" means the current year Utah taxable income before Utah net  
228 loss deduction, if determined to be less than zero.

229 ~~[(30)]~~ (35) "Utah net loss deduction" means the amount of Utah net losses from other  
230 taxable years that may be carried back or carried forward to the current taxable year in  
231 accordance with Section 59-7-110.

232 ~~[(31)]~~ (36) (a) "Utah taxable income" means Utah taxable income before net loss  
233 deduction less Utah net loss deduction.

234 (b) "Utah taxable income" includes income from tangible or intangible property located  
235 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign  
236 commerce.

237 ~~[(32)]~~ (37) "Utah taxable income before net loss deduction" means apportioned income  
238 plus nonbusiness income allocable to Utah net of related expenses.

239 ~~[(33)]~~ (38) (a) "Water's edge combined report" means a report combining the income  
240 and activities of:

241 (i) all members of a unitary group that are:

242 (A) corporations organized or incorporated in the United States, including those  
243 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section  
244 936, Internal Revenue Code, in accordance with Subsection ~~[(33)]~~ (38)(b); and



245 (B) corporations organized or incorporated outside of the United States meeting the  
246 threshold level of business activity; and

247 (ii) an affiliated group electing to file a water's edge combined report under Subsection  
248 59-7-402(2).

249 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto  
250 Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a  
251 unitary group.

252 [~~34~~] (39) "Worldwide combined report" means the combination of the income and  
253 activities of all members of a unitary group irrespective of the country in which the  
254 corporations are incorporated or conduct business activity.

255 Section 2. Section **59-7-105** is amended to read:

256 **59-7-105. Additions to unadjusted income.**

257 In computing adjusted income the following amounts shall be added to unadjusted  
258 income:

259 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state  
260 of the United States, including any agency and instrumentality of a state of the United States;

261 (2) the amount of any deduction taken on a corporation's federal return for taxes paid  
262 by a corporation:

263 (a) to Utah for taxes imposed by this chapter; and

264 (b) to another state of the United States, a foreign country, a United States possession,  
265 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or  
266 exercising its corporate franchise, including income, franchise, corporate stock and business  
267 and occupation taxes;

268 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and  
269 (2)(a);

270 (4) capital losses that have been deducted on a Utah corporate return in previous years;

271 (5) any deduction on the federal return that has been previously deducted on the Utah  
272 return;

273 (6) the amount of contributions claimed as a tax credit pursuant to Section 59-7-602;

274 (7) the amount of the deduction taken pursuant to Section 59-7-603 for sophisticated  
275 technological equipment;

276 (8) charitable contributions, to the extent deducted on the federal return when  
277 determining federal taxable income;

278 (9) the amount of gain or loss determined under Section 59-7-114 relating to a target  
279 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already  
280 been included in the unadjusted income of the target corporation;

281 (10) the amount of gain or loss determined under Section 59-7-115 relating to  
282 corporations treated for federal purposes as having disposed of its assets under Section 336(e),  
283 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted  
284 income of the target corporation;

285 (11) adjustments to gains, losses, depreciation expense, amortization expense, and  
286 similar items due to a difference between basis for federal purposes and basis as computed  
287 under Section 59-7-107; ~~and~~

288 (12) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings  
289 Incentive Program, from the account of a corporation that is an account owner as defined in  
290 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount  
291 withdrawn from the account of the corporation that is the account owner:

292 (a) is not expended for higher education costs as defined in Section 53B-8a-102; and

293 (b) is subtracted by the corporation:

294 (i) that is the account owner; and

295 (ii) in accordance with Subsection 59-7-106(18)~~[-]~~; and

296 (13) the amount of the deduction for dividends paid, as defined in Section 561, Internal  
297 Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in  
298 computing the taxable income of a captive real estate investment trust, if that captive real estate  
299 investment trust is subject to federal income taxation.

300 Section 3. Section **59-7-106** is amended to read:

301 **59-7-106. Subtractions from unadjusted income.**

302 In computing adjusted income the following amounts shall be subtracted from  
303 unadjusted income:

304 (1) the foreign dividend gross-up included in gross income for federal income tax  
305 purposes under Section 78, Internal Revenue Code;

306 (2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct

307 the loss on the current Utah return. The deduction shall be made by claiming the deduction on  
308 the current Utah return which shall be filed by the due date of the return, including extensions.  
309 For the purposes of this Subsection (2) all capital losses in a given year must be:

- 310 (a) deducted in the year incurred; or
- 311 (b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue  
312 Code;
- 313 (3) the decrease in salary expense deduction for federal income tax purposes due to  
314 claiming the federal jobs credit under Section 51, Internal Revenue Code;
- 315 (4) the decrease in qualified research and basic research expense deduction for federal  
316 income tax purposes due to claiming the federal research and development credit under Section  
317 41, Internal Revenue Code;
- 318 (5) the decrease in qualified clinical testing expense deduction for federal income tax  
319 purposes due to claiming the federal orphan drug credit under Section 28, Internal Revenue  
320 Code;
- 321 (6) any decrease in any expense deduction for federal income tax purposes due to  
322 claiming any other federal credit;
- 323 (7) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and  
324 (2)(b);
- 325 (8) any income on the federal corporate return that has been previously taxed by Utah;
- 326 (9) amounts included in federal taxable income that are due to refunds of taxes  
327 imposed for the privilege of doing business, or exercising a corporate franchise, including  
328 income, franchise, corporate stock and business and occupation taxes paid by the corporation to  
329 Utah, another state of the United States, a foreign country, a United States possession, or the  
330 Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income  
331 under Section 59-7-105;
- 332 (10) charitable contributions, to the extent allowed as a subtraction under Section  
333 59-7-109;
- 334 (11) (a) 50% of the dividends deemed received or received from subsidiaries which are  
335 members of the unitary group and are organized or incorporated outside of the United States  
336 unless such subsidiaries are included in a combined report under Section 59-7-402 or 59-7-403.  
337 In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the

338 dividends deemed received or received, the expense directly attributable to those dividends.  
339 Interest expense attributable to excluded dividends shall be determined by multiplying interest  
340 expense by a fraction, the numerator of which is the taxpayer's average investment in such  
341 dividend paying subsidiaries, and the denominator of which is the taxpayer's average total  
342 investment in assets;

343 (b) in determining income apportionable to this state, a portion of the factors of a  
344 foreign subsidiary whose dividends are partially excluded under Subsection (11)(a) shall be  
345 included in the combined report factors. The portion to be included shall be determined by  
346 multiplying each factor of the foreign subsidiary by a fraction, but not to exceed 100%, the  
347 numerator of which is the amount of the dividend paid by the foreign subsidiary which is  
348 included in adjusted income, and the denominator of which is the current year earnings and  
349 profits of the foreign subsidiary as determined under the Internal Revenue Code;

350 (12) (a) 50% of the adjusted income of a foreign operating company unless the  
351 taxpayer has elected to file a worldwide combined report as provided in Section 59-7-403. For  
352 purposes of this Subsection (12), when calculating the adjusted income of a foreign operating  
353 company, a foreign operating company may not deduct the subtractions allowable under this  
354 Subsection (12) and Subsection (11);

355 (b) in determining income apportionable to this state, the factors for a foreign operating  
356 company shall be included in the combined report factors in the same percentage its adjusted  
357 income is included in the combined adjusted income;

358 (13) the amount of gain or loss which is included in unadjusted income but not  
359 recognized for federal purposes on stock sold or exchanged by a member of a selling  
360 consolidated group as defined in Section 338, Internal Revenue Code, if an election has been  
361 made pursuant to Section 338(h)(10), Internal Revenue Code;

362 (14) the amount of gain or loss which is included in unadjusted income but not  
363 recognized for federal purposes on stock sold, exchanged, or distributed by a corporation  
364 pursuant to Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal  
365 Revenue Code, has been made for federal purposes;

366 (15) (a) adjustments to gains, losses, depreciation expense, amortization expense, and  
367 similar items due to a difference between basis for federal purposes and basis as computed  
368 under Section 59-7-107; and

369 (b) if there has been a reduction in federal basis for a federal tax credit where there is  
 370 no corresponding Utah tax credit, the amount of the reduction in basis shall be allowed as an  
 371 expense in the year of the federal credit;

372 (16) any interest expense not deducted on the federal corporate return under Section  
 373 265(b) or 291(e), Internal Revenue Code;

374 (17) 100% of the dividends received from subsidiaries which are insurance companies  
 375 exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"  
 376 as defined by Subsection 59-7-101[(7)](8); ~~[and]~~

377 (18) subject to Subsection 59-7-105(12), the amount of a qualified investment as  
 378 defined in Section 53B-8a-102 that:

379 (a) a corporation that is an account owner as defined in Section 53B-8a-102 makes  
 380 during the taxable year;

381 (b) the corporation described in Subsection (18)(a) does not deduct on a federal  
 382 corporation income tax return; and

383 (c) does not exceed the maximum amount of the qualified investment that may be  
 384 subtracted from unadjusted income for a taxable year in accordance with Subsections  
 385 53B-8a-106(1)(d) and (f)[:]; ~~and~~

386 (19) for purposes of income included in a combined report under Part 4, Combined  
 387 Reporting, the entire amount of the dividends a member of a unitary group receives or is  
 388 considered to receive from a captive real estate investment trust.

389 Section 4. Section **59-7-116.5** is amended to read:

390 **59-7-116.5. Real estate investment trusts.**

391 (1) A real estate investment trust~~[, as defined in Section 856, Internal Revenue Code,]~~  
 392 that is not a captive real estate investment trust shall be taxed on the same income taxed for  
 393 federal purposes under the Internal Revenue Code.

394 (2) Any income taxable under this section shall be taxed at the same rate and in the  
 395 same manner provided for in this chapter.

396 Section 5. Section **59-7-402** is amended to read:

397 **59-7-402. Water's edge combined report.**

398 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection  
 399 59-7-101[(33)](38)(a) is doing business in Utah, the unitary group shall file a water's edge

400 combined report.

401 (2) (a) A group of corporations that are not otherwise a unitary group may elect to file a  
402 water's edge combined report if each member of the group is:

403 (i) doing business in Utah;

404 (ii) part of the same affiliated group; and

405 (iii) qualified, under Section 1501, Internal Revenue Code, to file a federal  
406 consolidated return.

407 (b) Each corporation within the affiliated group that is doing business in Utah must  
408 consent to filing a combined report. If an affiliated group elects to file a combined report, each  
409 corporation within the affiliated group that is doing business in Utah must file a combined  
410 report.

411 (c) Corporations that elect to file a water's edge combined report under this section may  
412 not thereafter elect to file a separate return without the consent of the commission.

413 Section 6. Section **59-10-117** is amended to read:

414 **59-10-117. Adjusted gross income derived from Utah sources.**

415 (1) For purposes of Section 59-10-116, adjusted gross income derived from Utah  
416 sources includes those items includable in adjusted gross income attributable to or resulting  
417 from:

418 (a) the ownership in this state of any interest in real or tangible personal property,  
419 including real property or property rights from which "gross income from mining," as defined  
420 by Section 613(c), Internal Revenue Code, is derived; or

421 (b) the carrying on of a business, trade, profession, or occupation in this state.

422 (2) For the purposes of Subsection (1):

423 (a) income from intangible personal property, including annuities, dividends, interest,  
424 and gains from the disposition of intangible personal property shall constitute income derived  
425 from Utah sources only to the extent that such income is from property employed in a trade,  
426 business, profession, or occupation carried on in this state;

427 (b) deductions with respect to capital losses, net long-term capital gains, and net  
428 operating losses shall be based solely on income, gain, loss, and deduction connected with Utah  
429 sources, under rules prescribed by the commission in accordance with Title 63, Chapter 46a,  
430 Utah Administrative Rulemaking Act, but otherwise shall be determined in the same manner as

431 the corresponding federal deductions;

432 (c) salaries, wages, commissions, and compensation for personal services rendered  
433 outside this state shall not be considered to be derived from Utah sources;

434 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and  
435 deduction derived from or connected with Utah sources shall be determined under Section  
436 59-10-118;

437 (e) a nonresident, other than a dealer holding property primarily for sale to customers  
438 in the ordinary course of the dealer's trade or business, may not be considered to carry on a  
439 trade, business, profession, or occupation in this state solely by reason of the purchase or sale  
440 of property for the nonresident's own account;

441 (f) if a trade, business, profession, or occupation is carried on partly within and partly  
442 without this state, items of income, gain, loss, and deductions derived from or connected with  
443 Utah sources shall be determined in accordance with the provisions of Section 59-10-118;

444 (g) a nonresident partner's distributive share of partnership income, gain, loss, and  
445 deduction derived from or connected with Utah sources shall be determined under Section  
446 59-10-303;

447 (h) the share of a nonresident estate or trust and nonresident beneficiaries of any estate  
448 or trust in income, gain, loss, and deduction derived from or connected with Utah sources shall  
449 be determined under Section 59-10-207; and

450 (i) any dividend, interest, or distributive share of income, gain, or loss from a real  
451 estate investment trust, as defined in Section [~~59-7-116.5~~] 59-7-101, distributed or allocated to  
452 a nonresident investor in the trust, including any shareholder, beneficiary, or owner of a  
453 beneficial interest in the trust, shall be income from intangible personal property under  
454 Subsection (2)(a), and shall constitute income derived from Utah sources only to the extent the  
455 nonresident investor is employing its beneficial interest in the trust in a trade, business,  
456 profession, or occupation carried on by the investor in this state.

457 **Section 7. Retrospective operation.**

458 This bill has retrospective operation for taxable years beginning on or after January 1,  
459 2008.

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**Legislative Review Note**  
as of 2-5-08 2:59 PM

**Office of Legislative Research and General Counsel**



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**S.B. 204 - Income Taxation - Real Estate Investment Trusts**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Depending on the number of entities affected by this bill, corporate income tax revenue to the Education Fund may increase between \$5 - \$10 million annually.

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**Individual, Business and/or Local Impact**

Certain businesses could experience increased tax liability. Individuals and locals are likely unaffected.

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