

Senator Wayne L. Niederhauser proposes the following substitute bill:

INCOME TAXATION - REAL ESTATE

INVESTMENT TRUSTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- defines terms;
- addresses the income taxation of a real estate investment trust or income from a real estate investment trust; 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.

Utah Code Sections Affected:

AMENDS:

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



31
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) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
63 commission may make rules defining "established securities market."

64 (7) (a) "Controlling entity of a captive real estate investment trust" means an entity
65 that:

66 (i) is treated as an association taxable as a corporation under the Internal Revenue
67 Code;

68 (ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue
69 Code; and

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

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

72 (B) the value of the shares or beneficial interests of a captive real estate investment
73 trust.

74 (b) "Controlling entity of a captive real estate investment trust" does not include:

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

76 (ii) a qualified real estate investment subsidiary described in Section 856(i), Internal
77 Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real
78 estate investment trust; or

79 (iii) a foreign real estate investment trust.

80 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
81 commission may make rules defining "established securities market."

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

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

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

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

90 (A) a common parent corporation included in a group of corporations described in
91 Subsection (2)(a)(i); and

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

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

95 [~~6~~] (9) "Corporate return" or "return" includes a combined report.

96 [~~8~~] (10) "Corporation" includes:

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

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

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

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

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

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

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

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

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

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

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

117 (I) farmers; or

118 (II) fruit growers; or

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

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

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

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

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

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

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

135 (A) the terms:

136 (I) "member"; and

137 (II) "producer"; and

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

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

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

144 [~~(14)~~] (16) (a) "Foreign operating company" means a corporation that:

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

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

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

150 (17) (a) "Foreign real estate investment trust" means:
151 (i) a business entity organized outside the laws of the United States if:
152 (A) at least 75% of the business entity's total asset value at the close of the business
153 entity's taxable year is represented by:
154 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;
155 (II) cash or cash equivalents; or
156 (III) one or more securities issued or guaranteed by the United States;
157 (B) the business entity is:
158 (I) not subject to income taxation:
159 (Aa) on amounts distributed to the business entity's beneficial owners; and
160 (Bb) in the jurisdiction in which the business entity is organized; or
161 (II) exempt from income taxation on an entity level in the jurisdiction in which the
162 business entity is organized;
163 (C) the business entity distributes at least 85% of the business entity's taxable income,
164 as computed in the jurisdiction in which the business entity is organized, to the holders of the
165 business entity's:
166 (I) shares or beneficial interests; and
167 (II) on an annual basis;
168 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively
169 by a single person:
170 (Aa) the voting power of the business entity; or
171 (Bb) the value of the shares or beneficial interests of the business entity; or
172 (II) the shares of the business entity are regularly traded on an established securities
173 market; and
174 (E) the business entity is organized in a country that has a tax treaty with the United
175 States; or
176 (ii) a listed Australian property trust.
177 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
178 commission may make rules defining:
179 (i) "cash or cash equivalents";
180 (ii) "established securities market"; or

181 (iii) "listed Australian property trust."
182 ~~[(15)]~~ (18) "Income" includes losses.
183 ~~[(16)]~~ (19) "Internal Revenue Code" means Title 26 of the United States Code as
184 effective during the year in which Utah taxable income is determined.
185 ~~[(17)]~~ (20) "Nonbusiness income" is as defined in Section 59-7-302.
186 ~~[(18)]~~ (21) "Nonresident shareholder" means any shareholder of an S corporation who
187 on the last day of the taxable year of the S corporation, is:
188 (a) an individual not domiciled in Utah; or
189 (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.
190 (22) "Real estate investment trust" is as defined in Section 856, Internal Revenue Code.
191 ~~[(19)]~~ (23) "Related expenses" means:
192 (a) expenses directly attributable to nonbusiness income; and
193 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
194 and business income which bears the same ratio to the aggregate amount of such interest or
195 other expense, determined without regard to this Subsection ~~[(19)]~~ (23), as the average amount
196 of the asset producing the nonbusiness income bears to the average amount of all assets of the
197 taxpayer within the taxable year.
198 ~~[(20)]~~ (24) "Resident shareholder" means any shareholder of an S corporation who is
199 not a nonresident shareholder.
200 ~~[(22)]~~ (25) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
201 Section 168, Internal Revenue Code.
202 ~~[(21)]~~ (26) "S corporation" means an S corporation as defined in Section 1361, Internal
203 Revenue Code.
204 ~~[(23)]~~ (27) "State of the United States" includes any of the 50 states or the District of
205 Columbia ~~[and "United States" includes the 50 states and the District of Columbia].~~
206 ~~[(24)]~~ (28) (a) "Taxable year" means the calendar year or the fiscal year ending during
207 such calendar year upon the basis of which the adjusted income is computed.
208 (b) In the case of a return made for a fractional part of a year under this chapter or
209 under rules prescribed by the commission, "taxable year" includes the period for which such
210 return is made.
211 ~~[(25)]~~ (29) "Taxpayer" means any corporation subject to the tax imposed by this

212 chapter.

213 ~~[(26)]~~ (30) "Threshold level of business activity" means business activity in the United
214 States equal to or greater than 20% of the corporation's total business activity as determined
215 under Section 59-7-401.

216 ~~[(27)]~~ (31) "Unadjusted income" means federal taxable income as determined on a
217 separate return basis before intercompany eliminations as determined by the Internal Revenue
218 Code, before the net operating loss deduction and special deductions for dividends received.

219 ~~[(28)]~~ (32) (a) "Unitary group" means a group of corporations that:

220 (i) are related through common ownership; and

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

224 (A) centralized management;

225 (B) functional integration; and

226 (C) economies of scale.

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

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

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

230 ~~[(29)]~~ (34) "Utah net loss" means the current year Utah taxable income before Utah net
231 loss deduction, if determined to be less than zero.

232 ~~[(30)]~~ (35) "Utah net loss deduction" means the amount of Utah net losses from other
233 taxable years that may be carried back or carried forward to the current taxable year in
234 accordance with Section 59-7-110.

235 ~~[(31)]~~ (36) (a) "Utah taxable income" means Utah taxable income before net loss
236 deduction less Utah net loss deduction.

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

240 ~~[(32)]~~ (37) "Utah taxable income before net loss deduction" means apportioned income
241 plus nonbusiness income allocable to Utah net of related expenses.

242 ~~[(33)]~~ (38) (a) "Water's edge combined report" means a report combining the income

243 and activities of:

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

245 (A) corporations organized or incorporated in the United States, including those
246 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
247 936, Internal Revenue Code, in accordance with Subsection [~~(33)~~] (38)(b); and

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

250 (ii) an affiliated group electing to file a water's edge combined report under Subsection
251 59-7-402(2).

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

255 [~~(34)~~] (39) "Worldwide combined report" means the combination of the income and
256 activities of all members of a unitary group irrespective of the country in which the
257 corporations are incorporated or conduct business activity.

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

259 **59-7-105. Additions to unadjusted income.**

260 In computing adjusted income the following amounts shall be added to unadjusted
261 income:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

296 (b) is subtracted by the corporation:

297 (i) that is the account owner; and

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

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

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

304 **59-7-106. Subtractions from unadjusted income.**

305 In computing adjusted income the following amounts shall be subtracted from
306 unadjusted income:

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

309 (2) the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct
310 the loss on the current Utah return. The deduction shall be made by claiming the deduction on
311 the current Utah return which shall be filed by the due date of the return, including extensions.
312 For the purposes of this Subsection (2) all capital losses in a given year must be:

313 (a) deducted in the year incurred; or

314 (b) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
315 Code;

316 (3) the decrease in salary expense deduction for federal income tax purposes due to
317 claiming the federal jobs credit under Section 51, Internal Revenue Code;

318 (4) the decrease in qualified research and basic research expense deduction for federal
319 income tax purposes due to claiming the federal research and development credit under Section
320 41, Internal Revenue Code;

321 (5) the decrease in qualified clinical testing expense deduction for federal income tax
322 purposes due to claiming the federal orphan drug credit under Section 28, Internal Revenue
323 Code;

324 (6) any decrease in any expense deduction for federal income tax purposes due to
325 claiming any other federal credit;

326 (7) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and
327 (2)(b);

328 (8) any income on the federal corporate return that has been previously taxed by Utah;

329 (9) amounts included in federal taxable income that are due to refunds of taxes
330 imposed for the privilege of doing business, or exercising a corporate franchise, including
331 income, franchise, corporate stock and business and occupation taxes paid by the corporation to
332 Utah, another state of the United States, a foreign country, a United States possession, or the
333 Commonwealth of Puerto Rico to the extent that the taxes were added to unadjusted income
334 under Section 59-7-105;

335 (10) charitable contributions, to the extent allowed as a subtraction under Section

336 59-7-109;

337 (11) (a) 50% of the dividends deemed received or received from subsidiaries which are
338 members of the unitary group and are organized or incorporated outside of the United States
339 unless such subsidiaries are included in a combined report under Section 59-7-402 or 59-7-403.
340 In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct from the
341 dividends deemed received or received, the expense directly attributable to those dividends.
342 Interest expense attributable to excluded dividends shall be determined by multiplying interest
343 expense by a fraction, the numerator of which is the taxpayer's average investment in such
344 dividend paying subsidiaries, and the denominator of which is the taxpayer's average total
345 investment in assets;

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

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

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

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

365 (14) the amount of gain or loss which is included in unadjusted income but not
366 recognized for federal purposes on stock sold, exchanged, or distributed by a corporation

367 pursuant to Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
368 Revenue Code, has been made for federal purposes;

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

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

375 (16) any interest expense not deducted on the federal corporate return under Section
376 265(b) or 291(e), Internal Revenue Code;

377 (17) 100% of the dividends received from subsidiaries which are insurance companies
378 exempt from this chapter under Subsection 59-7-102(1)(c) and are under "common ownership"
379 as defined by Subsection 59-7-101[(7)](8); ~~and~~

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

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

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

386 (c) does not exceed the maximum amount of the qualified investment that may be
387 subtracted from unadjusted income for a taxable year in accordance with Subsections
388 53B-8a-106(1)(d) and (f)[-]; and

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

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

393 **59-7-116.5. Real estate investment trusts.**

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

397 (2) Any income taxable under this section shall be taxed at the same rate and in the

398 same manner provided for in this chapter.

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

400 **59-7-402. Water's edge combined report.**

401 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection
402 59-7-101[(33)](38)(a) is doing business in Utah, the unitary group shall file a water's edge
403 combined report.

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

406 (i) doing business in Utah;

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

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

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

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

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

417 **59-10-117. Adjusted gross income derived from Utah sources.**

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

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

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

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

426 (a) income from intangible personal property, including annuities, dividends, interest,
427 and gains from the disposition of intangible personal property shall constitute income derived
428 from Utah sources only to the extent that such income is from property employed in a trade,

429 business, profession, or occupation carried on in this state;

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

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

437 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and
438 deduction derived from or connected with Utah sources shall be determined under Section
439 59-10-118;

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

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

447 (g) a nonresident partner's distributive share of partnership income, gain, loss, and
448 deduction derived from or connected with Utah sources shall be determined under Section
449 59-10-303;

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

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

460 Section 7. **Retrospective operation.**

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

462 2008.