

1                   **INCOME TAXATION OF PASS-THROUGH**  
2                   **ENTITIES AND PASS-THROUGH ENTITY**  
3                   **TAXPAYERS**

4                   2009 GENERAL SESSION

5                   STATE OF UTAH

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

7                   House Sponsor: John Dougall

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9                   **LONG TITLE**

10                  **General Description:**

11                  This bill amends the Corporate Franchise and Income Taxes chapter and the Individual  
12                  Income Tax Act to address the income taxation of a pass-through entity and a taxpayer  
13                  to whom income, gain, loss, deduction, or credit of the pass-through entity is passed  
14                  through.

15                  **Highlighted Provisions:**

16                  This bill:

- 17                  ▶ provides that corporate franchise and income taxes are imposed on an S  
18                  corporation through the taxable year beginning on or after January 1, 2012, but  
19                  beginning on or before December 31, 2012;
- 20                  ▶ requires the Revenue and Taxation Interim Committee to conduct a study and  
21                  prescribes the scope of the study;
- 22                  ▶ repeals provisions governing the taxation of a limited liability company;
- 23                  ▶ addresses the income taxation of a taxpayer to whom income, gain, loss, deduction,  
24                  or credit of a pass-through entity is passed through;
- 25                  ▶ expands withholding requirements to provide that a pass-through entity, including  
26                  a general partnership, limited partnership, limited liability partnership, limited  
27                  liability company, or an S corporation, is required to pay or withhold a tax on  
28                  behalf of a resident or nonresident business entity or a nonresident individual;
- 29                  ▶ provides exceptions to the withholding requirements;

- 30           ▶ provides withholding procedures;
- 31           ▶ addresses return filing requirements for a pass-through entity or a taxpayer to
- 32 whom income, gain, loss, deduction, or credit of a pass-through entity is passed
- 33 through;
- 34           ▶ addresses the characterization of items of income, gain, loss, deduction, or credit
- 35 for purposes of state income taxation of a taxpayer to whom income, gain, loss,
- 36 deduction, or credit of a pass-through entity is passed through;
- 37           ▶ addresses the determination of a taxpayer's share of certain additions to income,
- 38 deductions from income, or adjustments to income required by state statute;
- 39           ▶ addresses a refundable tax credit for a taxpayer to whom income, gain, loss,
- 40 deduction, or credit of a pass-through entity is passed through; and
- 41           ▶ makes technical changes.

42 **Monies Appropriated in this Bill:**

43           None

44 **Other Special Clauses:**

45           This bill provides an immediate effective date.

46           This bill has retrospective operation for a taxable year beginning on or after January 1,

47 2009.

48           This bill provides revisor instructions.

49 **Utah Code Sections Affected:**

50 **AMENDS:**

51           **59-7-101**, as last amended by Laws of Utah 2008, Chapters 382 and 389

52           **59-7-102**, as last amended by Laws of Utah 2002, Chapters 76 and 286

53           **59-7-106**, as last amended by Laws of Utah 2008, Chapter 389

54           **59-7-402**, as last amended by Laws of Utah 2008, Chapter 389

55           **59-7-701**, as last amended by Laws of Utah 1995, Chapter 311

56           **59-7-705**, as enacted by Laws of Utah 1993, Chapter 169

57           **59-7-706**, as enacted by Laws of Utah 1993, Chapter 169

- 58           **59-7-707**, as enacted by Laws of Utah 1993, Chapter 169
- 59           **59-10-103**, as last amended by Laws of Utah 2008, Chapters 382 and 389
- 60           **59-10-117**, as last amended by Laws of Utah 2008, Chapters 382 and 389
- 61           **59-10-507**, as last amended by Laws of Utah 2008, Chapter 389
- 62           **59-10-1103**, as renumbered and amended by Laws of Utah 2006, Chapter 223
- 63           **59-10-1401**, as enacted by Laws of Utah 2008, Chapter 389
- 64           **59-10-1402**, as enacted by Laws of Utah 2008, Chapter 389
- 65           **59-10-1403**, as renumbered and amended by Laws of Utah 2008, Chapter 389
- 66           **59-10-1404**, as renumbered and amended by Laws of Utah 2008, Chapter 389
- 67           **59-10-1405**, as renumbered and amended by Laws of Utah 2008, Chapter 389

68 ENACTS:

- 69           **59-7-614.4**, Utah Code Annotated 1953
- 70           **59-10-1403.1**, Utah Code Annotated 1953
- 71           **59-10-1403.2**, Utah Code Annotated 1953
- 72           **59-10-1404.5**, Utah Code Annotated 1953

73 REPEALS:

- 74           **48-2c-117**, as last amended by Laws of Utah 2008, Chapter 389
- 75           **59-7-702**, as last amended by Laws of Utah 2003, Chapter 110
- 76           **59-7-703**, as last amended by Laws of Utah 2008, Chapter 382
- 77           **59-7-704**, as enacted by Laws of Utah 1993, Chapter 169



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

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

81           **59-7-101. Definitions.**

82           As used in this chapter:

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

85           (2) (a) "Affiliated group" means one or more chains of corporations that are connected

86 through stock ownership with a common parent corporation that meet the following  
87 requirements:

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

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

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

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

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

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

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

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

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

105 (ii) more than 50% of the voting power or value of the shares or beneficial interests of  
106 the real estate investment trust are directly, indirectly, or constructively:

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

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

109 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
110 the commission may make rules defining "established securities market."

111 [~~(8)~~] (7) (a) "Common ownership" means the direct or indirect control or ownership of  
112 more than 50% of the outstanding voting stock of:

113 (i) a parent-subsidary controlled group as defined in Section 1563, Internal Revenue

114 Code, except that 50% shall be substituted for 80%;

115 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue

116 Code, except that 50% shall be substituted for 80%; or

117 (iii) three or more corporations each of which is a member of a group of corporations

118 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

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

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

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

122 (b) Ownership of outstanding voting stock shall be determined by Section 1563,

123 Internal Revenue Code.

124 [~~(7)~~ (8) (a) "Controlling entity of a captive real estate investment trust" means an

125 entity that:

126 (i) is treated as an association taxable as a corporation under the Internal Revenue

127 Code;

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

129 Code; and

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

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

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

133 trust.

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

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

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

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

138 estate investment trust; or

139 (iii) a foreign real estate investment trust.

140 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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

- 142 (9) "Corporate return" or "return" includes a combined report.
- 143 (10) "Corporation" includes:
- 144 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue  
145 Code; and
- 146 (b) other organizations that are taxed as corporations for federal income tax purposes  
147 under the Internal Revenue Code.
- 148 (11) "Dividend" means any distribution, including money or other type of property,  
149 made by a corporation to its shareholders out of its earnings or profits accumulated after  
150 December 31, 1930.
- 151 (12) (a) "Doing business" includes any transaction in the course of its business by a  
152 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business  
153 in this state.
- 154 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:
- 155 (i) the right to do business through incorporation or qualification;
- 156 (ii) the owning, renting, or leasing of real or personal property within this state; and
- 157 (iii) the participation in joint ventures, working and operating agreements, the  
158 performance of which takes place in this state.
- 159 (13) "Domestic corporation" means a corporation that is incorporated or organized  
160 under the laws of this state.
- 161 (14) (a) "Farmers' cooperative" means an association, corporation, or other  
162 organization that is:
- 163 (i) (A) an association, corporation, or other organization of:
- 164 (I) farmers; or
- 165 (II) fruit growers; or
- 166 (B) an association, corporation, or other organization that is similar to an association,  
167 corporation, or organization described in Subsection (14)(a)(i)(A); and
- 168 (ii) organized and operated on a cooperative basis to:
- 169 (A) (I) market the products of members of the cooperative or the products of other

170 producers; and

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

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

176 (II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at  
177 actual costs plus necessary expenses to the members of the cooperative or other persons.

178 (b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the  
179 commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative  
180 Rulemaking Act, shall define:

181 (A) the terms:

182 (I) "member"; and

183 (II) "producer"; and

184 (B) what constitutes an association, corporation, or other organization that is similar to  
185 an association, corporation, or organization described in Subsection (14)(a)(i)(A).

186 (ii) The rules made under this Subsection (14)(b) shall be consistent with the filing  
187 requirements under federal law for a farmers' cooperative.

188 (15) "Foreign corporation" means a corporation that is not incorporated or organized  
189 under the laws of this state.

190 (16) (a) "Foreign operating company" means a corporation that:

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

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

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

196 (17) (a) "Foreign real estate investment trust" means:

197 (i) a business entity organized outside the laws of the United States if:

198 (A) at least 75% of the business entity's total asset value at the close of the business  
199 entity's taxable year is represented by:

- 200 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;
- 201 (II) cash or cash equivalents; or
- 202 (III) one or more securities issued or guaranteed by the United States;

203 (B) the business entity is:

- 204 (I) not subject to income taxation:
  - 205 (Aa) on amounts distributed to the business entity's beneficial owners; and
  - 206 (Bb) in the jurisdiction in which the business entity is organized; or
- 207 (II) exempt from income taxation on an entity level in the jurisdiction in which the  
208 business entity is organized;

209 (C) the business entity distributes at least 85% of the business entity's taxable income,  
210 as computed in the jurisdiction in which the business entity is organized, to the holders of the  
211 business entity's:

- 212 (I) shares or beneficial interests; and
- 213 (II) on an annual basis;

214 (D) (I) not more than 10% of the following is held directly, indirectly, or  
215 constructively by a single person:

- 216 (Aa) the voting power of the business entity; or
- 217 (Bb) the value of the shares or beneficial interests of the business entity; or
- 218 (II) the shares of the business entity are regularly traded on an established securities  
219 market; and

220 (E) the business entity is organized in a country that has a tax treaty with the United  
221 States; or

- 222 (ii) a listed Australian property trust.

223 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
224 the commission may make rules defining:

- 225 (i) "cash or cash equivalents";

226 (ii) "established securities market"; or  
227 (iii) "listed Australian property trust."  
228 (18) "Income" includes losses.  
229 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective  
230 during the year in which Utah taxable income is determined.  
231 (20) "Nonbusiness income" is as defined in Section 59-7-302.  
232 [~~(21) "Nonresident shareholder" means any shareholder of an S corporation who on~~  
233 ~~the last day of the taxable year of the S corporation, is:~~]  
234 [~~(a) an individual not domiciled in Utah; or]~~  
235 [~~(b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.]~~  
236 [~~(22)~~ (21) "Real estate investment trust" is as defined in Section 856, Internal  
237 Revenue Code.  
238 [~~(23)~~ (22) "Related expenses" means:  
239 (a) expenses directly attributable to nonbusiness income; and  
240 (b) the portion of interest or other expense indirectly attributable to both nonbusiness  
241 and business income which bears the same ratio to the aggregate amount of such interest or  
242 other expense, determined without regard to this Subsection [~~(23)~~ (22), as the average amount  
243 of the asset producing the nonbusiness income bears to the average amount of all assets of the  
244 taxpayer within the taxable year.  
245 [~~(24) "Resident shareholder" means any shareholder of an S corporation who is not a~~  
246 ~~nonresident shareholder.]~~  
247 [~~(25)~~ (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under  
248 Section 168, Internal Revenue Code.  
249 [~~(26)~~ (24) "S corporation" means an S corporation as defined in Section 1361,  
250 Internal Revenue Code.  
251 [~~(27)~~ (25) "State of the United States" includes any of the 50 states or the District of  
252 Columbia.  
253 [~~(28)~~ (26) (a) "Taxable year" means the calendar year or the fiscal year ending during

254 such calendar year upon the basis of which the adjusted income is computed.

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

258 [~~(29)~~] (27) "Taxpayer" means any corporation subject to the tax imposed by this  
259 chapter.

260 [~~(30)~~] (28) "Threshold level of business activity" means business activity in the United  
261 States equal to or greater than 20% of the corporation's total business activity as determined  
262 under Section 59-7-401.

263 [~~(31)~~] (29) "Unadjusted income" means federal taxable income as determined on a  
264 separate return basis before intercompany eliminations as determined by the Internal Revenue  
265 Code, before the net operating loss deduction and special deductions for dividends received.

266 [~~(32)~~] (30) (a) "Unitary group" means a group of corporations that:

267 (i) are related through common ownership; and

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

271 (A) centralized management;

272 (B) functional integration; and

273 (C) economies of scale.

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

275 (c) "Unitary group" does not include an S corporation.

276 [~~(33)~~] (31) "United States" includes the 50 states and the District of Columbia.

277 [~~(34)~~] (32) "Utah net loss" means the current year Utah taxable income before Utah  
278 net loss deduction, if determined to be less than zero.

279 [~~(35)~~] (33) "Utah net loss deduction" means the amount of Utah net losses from other  
280 taxable years that may be carried back or carried forward to the current taxable year in  
281 accordance with Section 59-7-110.

282           ~~[(36)]~~ (34) (a) "Utah taxable income" means Utah taxable income before net loss  
283 deduction less Utah net loss deduction.

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

287           ~~[(37)]~~ (35) "Utah taxable income before net loss deduction" means apportioned  
288 income plus nonbusiness income allocable to Utah net of related expenses.

289           ~~[(38)]~~ (36) (a) "Water's edge combined report" means a report combining the income  
290 and activities of:

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

292           (A) corporations organized or incorporated in the United States, including those  
293 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section  
294 936, Internal Revenue Code, in accordance with Subsection ~~[(38)]~~ (36)(b); and

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

297           (ii) an affiliated group electing to file a water's edge combined report under Subsection  
298 59-7-402(2).

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

302           ~~[(39)]~~ (37) "Worldwide combined report" means the combination of the income and  
303 activities of all members of a unitary group irrespective of the country in which the  
304 corporations are incorporated or conduct business activity.

305           Section 2. Section **59-7-102** is amended to read:

306           **59-7-102. Exemptions.**

307           (1) Except as provided in this section, the following are exempt from a tax under this  
308 chapter:

309           (a) an organization exempt under Section 501, Internal Revenue Code;

- 310 (b) an organization exempt under Section 528, Internal Revenue Code;
- 311 (c) an insurance company that is otherwise taxed on the insurance company's
- 312 premiums under Chapter 9, Taxation of Admitted Insurers;
- 313 (d) a building authority as defined in Section 17A-3-902;
- 314 (e) a farmers' cooperative; or
- 315 (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of
- 316 an ownership interest in:

- 317 (i) a project, as defined in Section 11-13-103; or
- 318 (ii) facilities providing additional project capacity, as defined in Section 11-13-103.

319 (2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts  
320 Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a  
321 person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to  
322 ~~the~~ a tax imposed by ~~Sections~~ Section 59-7-104, 59-7-201, 59-7-701, ~~and~~ or 59-8-104,  
323 because of:

324 (a) that person's ownership of tangible personal property located at the premises of a  
325 printer's facility in this state with which the person has contracted for printing; or

326 (b) the activities of the person's employees or agents who are:

327 (i) located solely at the premises of a printer's facility; and

328 (ii) performing services:

329 (A) related to:

330 (I) quality control;

331 (II) distribution; or

332 (III) printing services; and

333 (B) performed by the printer's facility in this state with which the person has  
334 contracted for printing.

335 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'  
336 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part  
337 8, Unrelated Business Income, to the extent provided in Part 8.

338 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization  
339 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal  
340 Revenue Code, the organization's income is also taxable under this chapter.

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

342 **59-7-106. Subtractions from unadjusted income.**

343 In computing adjusted income the following amounts shall be subtracted from  
344 unadjusted income:

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

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

351 (a) deducted in the year incurred; or

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

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

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

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

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

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

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

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

373 (10) charitable contributions, to the extent allowed as a subtraction under Section  
374 59-7-109;

375 (11) (a) 50% of the dividends deemed received or received from subsidiaries which  
376 are members of the unitary group and are organized or incorporated outside of the United  
377 States unless such subsidiaries are included in a combined report under Section 59-7-402 or  
378 59-7-403. In arriving at the amount of the dividend exclusion, the taxpayer shall first deduct  
379 from the dividends deemed received or received, the expense directly attributable to those  
380 dividends. Interest expense attributable to excluded dividends shall be determined by  
381 multiplying interest expense by a fraction, the numerator of which is the taxpayer's average  
382 investment in such dividend paying subsidiaries, and the denominator of which is the  
383 taxpayer's average total investment in assets;

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

391 (12) (a) 50% of the adjusted income of a foreign operating company unless the  
392 taxpayer has elected to file a worldwide combined report as provided in Section 59-7-403. For  
393 purposes of this Subsection (12), when calculating the adjusted income of a foreign operating

394 company, a foreign operating company may not deduct the subtractions allowable under this  
395 Subsection (12) and Subsection (11);

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

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

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

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

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

413 (16) any interest expense not deducted on the federal corporate return under Section  
414 265(b) or 291(e), Internal Revenue Code;

415 (17) 100% of the dividends received from subsidiaries which are insurance companies  
416 exempt from this chapter under Subsection 59-7-102(1)(c) and are under ["common  
417 ownership["~~as defined by Subsection 59-7-101(8)~~];

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

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

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

424 (c) does not exceed the maximum amount of the qualified investment that may be  
425 subtracted from unadjusted income for a taxable year in accordance with Subsections  
426 53B-8a-106(1)(d) and (f); and

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

430 Section 4. Section **59-7-402** is amended to read:

431 **59-7-402. Water's edge combined report.**

432 (1) Except as provided in Section 59-7-403, if any corporation listed in Subsection  
433 59-7-101[(38)](36)(a) is doing business in Utah, the unitary group shall file a water's edge  
434 combined report.

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

437 (i) doing business in Utah;

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

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

441 (b) Each corporation within the affiliated group that is doing business in Utah must  
442 consent to filing a combined report. If an affiliated group elects to file a combined report,  
443 each corporation within the affiliated group that is doing business in Utah must file a  
444 combined report.

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

447 Section 5. Section **59-7-614.4** is enacted to read:

448 **59-7-614.4. Tax credit for pass-through entity taxpayer.**

449 (1) As used in this section:

450 (a) "Pass-through entity" is as defined in Section 59-10-1402.

451 (b) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

452 (2) A pass-through entity taxpayer may claim a refundable tax credit against the tax  
453 otherwise due under this chapter.

454 (3) The tax credit described in Subsection (2) is equal to the amount paid or withheld  
455 by the pass-through entity on behalf of the pass-through entity taxpayer described in  
456 Subsection (2) in accordance with Section 59-10-1403.2.

457 (4) A pass-through entity taxpayer may not claim a tax credit under this section for an  
458 amount for which the pass-through entity taxpayer claims a tax credit under Section  
459 59-10-1103.

460 Section 6. Section **59-7-701** is amended to read:

461 **59-7-701. Taxation of S corporations -- Revenue and Taxation Interim**  
462 **Committee study.**

463 ~~[Am] (1) Except as provided in Section 59-7-102 and subject to the other provisions of~~  
464 ~~this part, beginning on July 1, 1994, and ending on the last day of the taxable year that begins~~  
465 ~~on or after January 1, 2012, but begins on or before December 31, 2012, an S corporation[;~~  
466 ~~except one described in Subsection 59-7-102(2), shall be taxed for state purposes] is subject to~~  
467 ~~taxation in the same manner as that S corporation is taxed [for federal purposes as provided in~~  
468 ~~Subtitle A, Chapter 1S] under Subchapter S - Tax Treatment of S Corporations and Their~~  
469 ~~Shareholders, Sec. 1361 et seq., Internal Revenue Code[, and as modified by this chapter. The~~  
470 ~~tax rate for S corporations shall be the rate provided for corporations under Section 59-7-104.~~  
471 ~~Taxes owed under this section shall be subject to the estimated tax payments as provided in~~  
472 ~~Section 59-7-504].~~

473 (2) An S corporation is taxed at the tax rate provided in Section 59-7-104.

474 (3) The business income and nonbusiness income of an S corporation is subject to Part  
475 3, Allocation and Apportionment of Income - Utah UDITPA Provisions.

476 (4) An S corporation having income derived from or connected with Utah sources  
477 shall make a return in accordance with Section 59-10-507.

478 (5) An S corporation shall make payments of estimated tax as required by Section  
479 59-7-504.

480 (6) An S corporation is subject to Chapter 10, Part 14, Pass-Through Entities and  
481 Pass-Through Entity Taxpayers Act.

482 (7) A pass-through entity taxpayer as defined in Section 59-10-1402 of an S  
483 corporation is subject to Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity  
484 Taxpayers Act.

485 (8) Provisions under this chapter governing the following apply to an S corporation:

486 (a) an assessment;

487 (b) a penalty;

488 (c) a refund; or

489 (d) a record required for an S corporation.

490 (9) (a) During the 2011 interim, the Revenue and Taxation Interim Committee shall  
491 study the fiscal impacts of:

492 (i) the enactment of this bill; and

493 (ii) the taxation of S corporations under this part.

494 (b) On or before November 30, 2011, the Revenue and Taxation Interim Committee  
495 shall report its findings and recommendations on the study to the Executive Appropriations  
496 Committee.

497 Section 7. Section **59-7-705** is amended to read:

498 **59-7-705. Minimum tax not applicable to an S corporation.**

499 The minimum tax provided in Section 59-7-104 does not apply to [~~S corporations~~  
500 ~~taxed under this part~~] an S corporation subject to taxation under Section 59-7-701.

501 Section 8. Section **59-7-706** is amended to read:

502 **59-7-706. Distribution and credit of revenues.**

503 [~~Any revenues~~] Revenues collected or received by the commission under this part shall  
504 be deposited daily with the state treasurer and distributed and credited as provided in Section  
505 59-10-544.

506 Section 9. Section **59-7-707** is amended to read:

507 **59-7-707. Commission rulemaking authority.**

508 [~~The~~] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

509 the commission may [~~adopt~~] make rules to implement this part.

510 Section 10. Section **59-10-103** is amended to read:

511 **59-10-103. Definitions.**

512 (1) As used in this chapter:

513 (a) "Adjusted gross income":

514 (i) for a resident or nonresident individual, is as defined in Section 62, Internal  
515 Revenue Code; or

516 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),  
517 Internal Revenue Code.

518 (b) "Corporation" includes:

519 (i) an association;

520 (ii) a joint stock company; and

521 (iii) an insurance company.

522 (c) "Distributable net income" is as defined in Section 643, Internal Revenue Code.

523 (d) "Employee" is as defined in Section 59-10-401.

524 (e) "Employer" is as defined in Section 59-10-401.

525 (f) "Federal taxable income":

526 (i) for a resident or nonresident individual, means taxable income as defined by  
527 Section 63, Internal Revenue Code; or

528 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and  
529 (b), Internal Revenue Code.

530 (g) "Fiduciary" means:

531 (i) a guardian;

532 (ii) a trustee;

533 (iii) an executor;

- 534 (iv) an administrator;
- 535 (v) a receiver;
- 536 (vi) a conservator; or
- 537 (vii) any person acting in any fiduciary capacity for any individual.
- 538 (h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).
- 539 (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
- 540 homesteaded land that was held to have been diminished from the Uintah and Ouray
- 541 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).
- 542 (j) "Individual" means a natural person and includes aliens and minors.
- 543 (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate
- 544 all or part of the trust without the consent of a person who has a substantial beneficial interest
- 545 in the trust and the interest would be adversely affected by the exercise of the settlor's power to
- 546 revoke or terminate all or part of the trust.
- 547 (l) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.
- 548 (m) "Nonresident individual" means an individual who is not a resident of this state.
- 549 (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
- 550 resident estate or trust.
- 551 (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
- 552 unincorporated organization:
- 553 (A) through or by means of which any business, financial operation, or venture is
- 554 carried on; and
- 555 (B) which is not, within the meaning of this chapter:
- 556 (I) a trust;
- 557 (II) an estate; or
- 558 (III) a corporation.
- 559 (ii) "Partnership" does not include any organization not included under the definition
- 560 of "partnership" in Section 761, Internal Revenue Code.
- 561 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or

562 organization described in Subsection (1)(o)(i).

563 (p) "Qualified nongrantor charitable lead trust" means a trust:

564 (i) that is irrevocable;

565 (ii) that has a trust term measured by:

566 (A) a fixed term of years; or

567 (B) the life of a person living on the day on which the trust is created;

568 (iii) under which:

569 (A) a portion of the value of the trust assets is distributed during the trust term:

570 (I) to an organization described in Section 170(c), Internal Revenue Code; and

571 (II) as a:

572 (Aa) guaranteed annuity interest; or

573 (Bb) unitrust interest; and

574 (B) assets remaining in the trust at the termination of the trust term are distributed to a

575 beneficiary:

576 (I) designated in the trust; and

577 (II) that is not an organization described in Section 170(c), Internal Revenue Code;

578 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue

579 Code; and

580 (v) under which the grantor of the trust is not treated as the owner of any portion of the

581 trust for federal income tax purposes.

582 (q) (i) "Resident individual" means:

583 (A) an individual who is domiciled in this state for any period of time during the

584 taxable year, but only for the duration of the period during which the individual is domiciled

585 in this state; or

586 (B) an individual who is not domiciled in this state but:

587 (I) maintains a permanent place of abode in this state; and

588 (II) spends in the aggregate 183 or more days of the taxable year in this state.

589 (ii) For purposes of Subsection (1)(q)(i)(B), a fraction of a calendar day shall be

590 counted as a whole day.

591 (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.

592 (s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.

593 (t) "State income tax percentage for a nonresident estate or trust" means a percentage  
594 equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the  
595 nonresident estate's or trust's total adjusted gross income for that taxable year after making the  
596 adjustments required by:

597 (i) Section 59-10-202;

598 (ii) Section 59-10-207;

599 (iii) Section 59-10-209.1; or

600 (iv) Section 59-10-210.

601 (u) "State income tax percentage for a nonresident individual" means a percentage  
602 equal to a nonresident individual's state taxable income for the taxable year divided by the  
603 difference between:

604 (i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross  
605 income for that taxable year, after making the:

606 (A) additions and subtractions required by Section 59-10-114; and

607 (B) adjustments required by Section 59-10-115; and

608 (ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember,  
609 the compensation the servicemember receives for military service if the servicemember is  
610 serving in compliance with military orders.

611 (v) "State income tax percentage for a part-year resident individual" means, for a  
612 taxable year, a fraction:

613 (i) the numerator of which is the sum of:

614 (A) subject to [~~Subsections 59-10-1404(3) and (4)~~] Section 59-10-1404.5, for the time  
615 period during the taxable year that the part-year resident individual is a resident, the part-year  
616 resident individual's total adjusted gross income for that time period, after making the:

617 (I) additions and subtractions required by Section 59-10-114; and

618 (II) adjustments required by Section 59-10-115; and  
619 (B) for the time period during the taxable year that the part-year resident individual is  
620 a nonresident, an amount calculated by:  
621 (I) determining the part-year resident individual's adjusted gross income for that time  
622 period, after making the:  
623 (Aa) additions and subtractions required by Section 59-10-114; and  
624 (Bb) adjustments required by Section 59-10-115; and  
625 (II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I)  
626 that is derived from Utah sources in accordance with Section 59-10-117; and  
627 (ii) the denominator of which is the difference between:  
628 (A) the part-year resident individual's total adjusted gross income for that taxable year,  
629 after making the:  
630 (I) additions and subtractions required by Section 59-10-114; and  
631 (II) adjustments required by Section 59-10-115; and  
632 (B) if the part-year resident individual is a servicemember, any compensation the  
633 servicemember receives for military service during the portion of the taxable year that the  
634 servicemember is a nonresident if the servicemember is serving in compliance with military  
635 orders.  
636 (w) "Taxable income" or "state taxable income":  
637 (i) subject to [~~Subsection 59-10-1404(3)~~] Section 59-10-1404.5, for a resident  
638 individual, means the resident individual's adjusted gross income after making the:  
639 (A) additions and subtractions required by Section 59-10-114; and  
640 (B) adjustments required by Section 59-10-115;  
641 (ii) for a nonresident individual, is an amount calculated by:  
642 (A) determining the nonresident individual's adjusted gross income for the taxable  
643 year, after making the:  
644 (I) additions and subtractions required by Section 59-10-114; and  
645 (II) adjustments required by Section 59-10-115; and

646 (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A)  
647 that is derived from Utah sources in accordance with Section 59-10-117;

648 (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

649 (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.

650 (x) "Taxpayer" means any individual, estate, trust, or beneficiary of an estate or trust,  
651 that has income subject in whole or part to the tax imposed by this chapter.

652 (y) "Trust term" means a time period:

653 (i) beginning on the day on which a qualified nongrantor charitable lead trust is  
654 created; and

655 (ii) ending on the day on which the qualified nongrantor charitable lead trust described  
656 in Subsection (1)(y)(i) terminates.

657 (z) "Uintah and Ouray Reservation" means the lands recognized as being included  
658 within the Uintah and Ouray Reservation in:

659 (i) Hagen v. Utah, 510 U.S. 399 (1994); and

660 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

661 (aa) "Unadjusted income" means an amount equal to the difference between:

662 (i) the total income required to be reported by a resident or nonresident estate or trust  
663 on the resident or nonresident estate's or trust's federal income tax return for estates and trusts  
664 for the taxable year; and

665 (ii) the sum of the following:

666 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:

667 (I) for administering the resident or nonresident estate or trust; and

668 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or  
669 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable  
670 year;

671 (B) the income distribution deduction that a resident or nonresident estate or trust  
672 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or  
673 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable

674 year;

675 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for  
676 estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as  
677 allowed on the resident or nonresident estate's or trust's federal income tax return for estates  
678 and trusts for the taxable year; and

679 (D) the amount that a resident or nonresident estate or trust deducts as a personal  
680 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or  
681 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable  
682 year.

683 (bb) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

684 (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute  
685 Indian Tribe of the Uintah and Ouray Reservation.

686 (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

687 (ee) "Wages" is as defined in Section 59-10-401.

688 (2) (a) Any term used in this chapter has the same meaning as when used in  
689 comparable context in the laws of the United States relating to federal income taxes unless a  
690 different meaning is clearly required.

691 (b) Any reference to the Internal Revenue Code or to the laws of the United States  
692 shall mean the Internal Revenue Code or other provisions of the laws of the United States  
693 relating to federal income taxes that are in effect for the taxable year.

694 (c) Any reference to a specific section of the Internal Revenue Code or other provision  
695 of the laws of the United States relating to federal income taxes shall include any  
696 corresponding or comparable provisions of the Internal Revenue Code as amended,  
697 redesignated, or reenacted.

698 Section 11. Section **59-10-117** is amended to read:

699 **59-10-117. State taxable income derived from Utah sources.**

700 (1) For purposes of Section 59-10-116, state taxable income includes those items  
701 includable in state taxable income attributable to or resulting from:

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

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

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

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

711 (b) a deduction with respect to a capital loss, net long-term capital gain, or net  
712 operating loss shall be based solely on income, gain, loss, and deduction connected with Utah  
713 sources, under rules prescribed by the commission in accordance with Title 63G, Chapter 3,  
714 Utah Administrative Rulemaking Act, but otherwise shall be determined in the same manner  
715 as the corresponding federal deductions;

716 (c) a salary, wage, commission, or compensation for personal services rendered outside  
717 this state may not be considered to be derived from Utah sources;

718 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and  
719 deduction derived from or connected with Utah sources shall be determined under Section  
720 59-10-118;

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

725 (f) if a trade, business, profession, or occupation is carried on partly within and partly  
726 without this state, an item of income, gain, loss, or a deduction derived from or connected with  
727 Utah sources shall be determined in accordance with Section 59-10-118;

728 (g) a nonresident partner's distributive share of partnership income, gain, loss, ~~and~~  
729 deduction, or credit derived from or connected with Utah sources shall be determined under

730 [~~Section 59-10-1405~~] Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act;

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

734 (i) any dividend, interest, or distributive share of income, gain, or loss from a real  
 735 estate investment trust, as defined in Section 59-7-101, distributed or allocated to a  
 736 nonresident investor in the trust, including any shareholder, beneficiary, or owner of a  
 737 beneficial interest in the trust, shall be income from intangible personal property under  
 738 Subsection (2)(a), and shall constitute income derived from Utah sources only to the extent the  
 739 nonresident investor is employing its beneficial interest in the trust in a trade, business,  
 740 profession, or occupation carried on by the investor in this state.

741 Section 12. Section **59-10-507** is amended to read:

742 **59-10-507. Return by a pass-through entity.**

743 (1) As used in this section:

744 (a) "Pass-through entity" is as defined in Section 59-10-1402.

745 (b) "Taxable year" means a year or other time period that would be a taxable year of a  
 746 pass-through entity if the pass-through entity were subject to taxation under this chapter.

747 (2) A pass-through entity having any income derived from or connected with Utah  
 748 sources [~~in this state~~] shall make a return for the taxable year as prescribed by the commission.

749 [~~(3) For purposes of Subsection (2), a pass-through entity's income derived from~~  
 750 ~~sources in this state shall be determined in accordance with the principles of Section~~  
 751 ~~59-10-1405.]~~

752 Section 13. Section **59-10-1103** is amended to read:

753 **59-10-1103. Tax credit for pass-through entity taxpayer.**

754 [~~(1)(a) A nonresident shareholder of an S corporation]~~

755 (1) As used in this section:

756 (a) "Pass-through entity" is as defined in Section 59-10-1402.

757 (b) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

758 (2) A pass-through entity taxpayer may claim a refundable tax credit against the tax  
 759 otherwise due under this chapter if that ~~[nonresident shareholder]~~ pass-through entity taxpayer  
 760 is a:

761 ~~[(i)]~~ (a) ~~[nonresident]~~ claimant;

762 ~~[(ii)]~~ (b) ~~[nonresident]~~ estate; or

763 ~~[(iii)]~~ (c) ~~[nonresident]~~ trust.

764 ~~[(b)]~~ (3) The tax credit described in Subsection ~~[(1)(a)]~~ (2) is equal to the amount  
 765 paid or withheld by the ~~[S-corporation]~~ pass-through entity on behalf of the ~~[nonresident~~  
 766 ~~shareholder]~~ pass-through entity taxpayer described in Subsection ~~[(1)(a)]~~ (2) in accordance  
 767 with Section ~~[59-7-703]~~ 59-10-1403.2.

768 ~~[(2) A nonresident shareholder described in Subsection (1)(a) that has no other Utah~~  
 769 ~~source income may elect:]~~

770 ~~[(a) not to claim the tax credit provided in Subsection (1); and]~~

771 ~~[(b) not to file a tax return under this chapter for the taxable year.]~~

772 ~~[(3) If a nonresident shareholder described in Subsection (1)(a) may claim a~~  
 773 ~~nonrefundable tax credit as defined in Section 59-10-1002 or a refundable tax credit other than~~  
 774 ~~the tax credit described in Subsection (1), the nonresident shareholder described in Subsection~~  
 775 ~~(1)(a) shall file a tax return under this chapter to claim those nonrefundable tax credits or~~  
 776 ~~refundable tax credits.]~~

777 (4) A pass-through entity taxpayer may not claim a tax credit under this section for an  
 778 amount for which the pass-through entity taxpayer claims a tax credit under Section  
 779 59-7-614.4.

780 Section 14. Section **59-10-1401** is amended to read:

781 **Part 14. Pass-Through Entities and Pass-Through Entity Taxpayers Act**  
 782 **59-10-1401. Title.**

783 This part is known as the "[~~Income Tax Treatment of~~] Pass-Through Entities and  
 784 Pass-Through Entity Taxpayers Act."

785 Section 15. Section **59-10-1402** is amended to read:

786 **59-10-1402. Definitions.**

787 As used in this part:

788 [~~(1) "Limited liability company" includes a foreign limited liability company.~~]

789 (1) "Addition, subtraction, or adjustment" means:

790 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal  
791 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes:

792 (i) an addition to unadjusted income described in Section 59-7-105; or

793 (ii) a subtraction from unadjusted income described in Section 59-7-106;

794 (b) for a pass-through entity taxpayer that is classified as an individual, partnership, or  
795 S corporation for federal income tax purposes:

796 (i) an addition to or subtraction from adjusted gross income described in Section  
797 59-10-114; or

798 (ii) an adjustment to adjusted gross income described in Section 59-10-115; or

799 (c) for a pass-through entity taxpayer that is classified as an estate or a trust for federal  
800 income tax purposes:

801 (i) an addition to or subtraction from unadjusted income described in Section  
802 59-10-202; or

803 (ii) an adjustment to unadjusted income described in Section 59-10-209.1.

804 (2) "Business income" means income arising from transactions and activity in the  
805 regular course of a pass-through entity's trade or business and includes income from tangible  
806 and intangible property if the acquisition, management, and disposition of the property  
807 constitutes integral parts of the pass-through entity's regular trade or business operations.

808 (3) "C corporation" is as defined in Section 1361, Internal Revenue Code.

809 (4) "Commercial domicile" means the principal place from which the trade or business  
810 of a business entity is directed or managed.

811 (5) "Derived from or connected with Utah sources" means:

812 (a) if a pass-through entity taxpayer is classified as a C corporation for federal income  
813 tax purposes, derived from or connected with Utah sources in accordance with Chapter 7, Part

814 3, Allocation and Apportionment of Income - Utah UDITPA Provisions; or

815 (b) if a pass-through entity or pass-through entity taxpayer is classified as an estate,  
 816 individual, partnership, S corporation, or a trust for federal income tax purposes, derived from  
 817 or connected with Utah sources in accordance with Sections 59-10-117 and 59-10-118.

818 (6) "Nonbusiness income" means all income of a pass-through entity other than  
 819 business income.

820 (7) "Nonresident business entity" means a business entity that does not have its  
 821 commercial domicile in this state.

822 (8) "Nonresident pass-through entity taxpayer" means a pass-through entity taxpayer  
 823 that is a:

824 (a) nonresident individual; or

825 (b) nonresident business entity.

826 ~~[(2)]~~ (9) (a) "Pass-through entity" means a business entity that is:

827 (i) the following if classified as a partnership for federal income tax purposes:

828 ~~[(i)]~~ (A) a general partnership;

829 ~~[(ii)]~~ (B) a limited liability company;

830 ~~[(iii)]~~ (C) a limited liability partnership; or

831 ~~[(iv)]~~ (D) a limited partnership; ~~or~~

832 (ii) an S corporation; or

833 ~~[(v)]~~ (iii) a business entity similar to ~~[Subsections (2)(a)(i) through (iv)]~~ Subsection  
 834 (9)(a)(i) or (ii):

835 (A) with respect to which the business entity's income ~~[or losses are], gain, loss,~~  
 836 deduction, or credit is divided among and passed through to ~~[taxpayers]~~ one or more  
 837 pass-through entity taxpayers; and

838 (B) as defined by the commission by rule made in accordance with Title 63G, Chapter  
 839 3, Utah Administrative Rulemaking Act.

840 (b) "Pass-through entity" does not include ~~[a trust]~~ an estate or trust that is classified  
 841 as an estate or trust for federal income tax purposes.

842 ~~[(3) "Taxpayer" means:]~~

843 (10) "Pass-through entity taxpayer " means a resident or nonresident individual, a  
844 resident or nonresident business entity, or a resident or nonresident estate or trust:

845 (a) that is:

846 ~~[(a)]~~ (i) for a general partnership, a partner;

847 ~~[(b)]~~ (ii) for a limited liability company, a member;

848 ~~[(c)]~~ (iii) for a limited liability partnership, a partner;

849 ~~[(d)]~~ (iv) for a limited partnership, a partner; [or]

850 (v) for an S corporation, a shareholder; or

851 ~~[(e)]~~ (vi) for a business entity described in Subsection ~~[(2)(a)(v)]~~ (9)(a)(iii), a member,  
852 partner, shareholder, or other title designated by the commission by rule made in accordance  
853 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[-]; and

854 (b) to which the income, gain, loss, deduction, or credit of a pass-through entity is  
855 passed through.

856 (11) "Resident business entity" means a business entity that is not a nonresident  
857 business entity.

858 (12) "Resident pass-through entity taxpayer" means a pass-through entity taxpayer that  
859 is a:

860 (a) resident individual; or

861 (b) resident business entity.

862 (13) "Return" means a return that a pass-through entity taxpayer files:

863 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal  
864 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or

865 (b) for a pass-through entity taxpayer that is classified as an estate, individual,  
866 partnership, S corporation, or a trust for federal income tax purposes, under this chapter.

867 (14) "S corporation" is as defined in Section 1361, Internal Revenue Code.

868 (15) "Share of income, gain, loss, deduction, or credit of a pass-through entity" means:

869 (a) for a pass-through entity except for a pass-through entity that is an S corporation:

870 (i) for a resident pass-through entity taxpayer, the resident pass-through entity  
 871 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through  
 872 entity as determined under Section 704 et seq., Internal Revenue Code; and

873 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity  
 874 taxpayer's distributive share of income, gain, loss, deduction, or credit of the pass-through  
 875 entity:

876 (A) as determined under Section 704 et seq., Internal Revenue Code; and

877 (B) derived from or connected with Utah sources; or

878 (b) for an S corporation:

879 (i) for a resident pass-through entity taxpayer, the resident pass-through entity  
 880 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation, as  
 881 determined under Sec. 1366 et seq., Internal Revenue Code; or

882 (ii) for a nonresident pass-through entity taxpayer, the nonresident pass-through entity  
 883 taxpayer's pro rata share of income, gain, loss, deduction, or credit of the S corporation:

884 (A) as determined under Section 1366 et seq., Internal Revenue Code; and

885 (B) derived from or connected with Utah sources.

886 Section 16. Section **59-10-1403** is amended to read:

887 **59-10-1403. Income tax treatment of a pass-through entity -- Returns --**

888 **Classification same as under Internal Revenue Code.**

889 (1) Subject to Subsection (3), a pass-through entity is not subject to a tax imposed by  
 890 this chapter.

891 (2) The income [~~or losses~~], gain, loss, deduction, or credit of a pass-through entity  
 892 shall be [~~divided among and~~] passed through to one or more pass-through entity taxpayers as  
 893 provided in this part.

894 (3) A pass-through entity is subject to the return filing requirements of Section  
 895 59-10-507.

896 (4) A pass-through entity that [~~is a limited liability company that~~] transacts business in  
 897 the state shall be classified for purposes of taxation under this title in the same manner as the

898 [~~limited liability company~~] pass-through entity is classified for federal income tax purposes.

899 Section 17. Section **59-10-1403.1** is enacted to read:

900 **59-10-1403.1. Income tax treatment of a pass-through entity taxpayer -- Return**  
901 **filing requirements.**

902 (1) Subject to the other provisions of this part, a pass-through entity taxpayer is  
903 subject to taxation:

904 (a) for a pass-through entity taxpayer that is classified as a C corporation for federal  
905 income tax purposes:

906 (i) if that pass-through entity taxpayer is a resident pass-through entity taxpayer, as a  
907 domestic corporation is taxed under Chapter 7, Corporate Franchise and Income Taxes; or

908 (ii) if that pass-through entity taxpayer is a nonresident pass-through entity taxpayer,  
909 as a foreign corporation is taxed under Chapter 7, Corporate Franchise and Income Taxes; or

910 (b) for a pass-through entity taxpayer that is classified as an estate, individual,  
911 partnership, S corporation, or a trust for federal income tax purposes:

912 (i) if that pass-through entity taxpayer is a resident pass-through entity taxpayer, as a  
913 resident estate, resident individual, resident partnership, resident S corporation, or resident  
914 trust is taxed under this chapter; or

915 (ii) if that pass-through entity taxpayer is a nonresident pass-through entity taxpayer,  
916 as a nonresident estate, nonresident individual, nonresident partnership, nonresident S  
917 corporation, or nonresident trust is taxed under this chapter.

918 (2) A pass-through entity taxpayer is subject to taxation on the pass-through entity  
919 taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity.

920 (3) (a) Subject to Subsection (3)(b)(iii), a resident pass-through entity taxpayer shall  
921 file a return:

922 (i) if the resident pass-through entity taxpayer is classified as a C corporation for  
923 federal income tax purposes, as a domestic corporation under Chapter 7, Corporate Franchise  
924 and Income Taxes; or

925 (ii) if the resident pass-through entity taxpayer is classified as an estate, individual,

926 partnership, S corporation, or a trust for federal income tax purposes, as a resident estate,  
927 resident individual, resident partnership, resident S corporation, or resident trust under this  
928 chapter.

929 (b) (i) Except as provided in Subsection (3)(b)(ii) and subject to Subsection (3)(b)(iii)  
930 or (iv), a nonresident pass-through entity taxpayer shall file a return:

931 (A) if the nonresident pass-through entity taxpayer is classified as a C corporation for  
932 federal income tax purposes, as a foreign corporation under Chapter 7, Corporate Franchise  
933 and Income Taxes; or

934 (B) if the nonresident pass-through entity taxpayer is classified as an estate,  
935 individual, partnership, S corporation, or a trust for federal income tax purposes, as a  
936 nonresident estate, nonresident individual, nonresident partnership, nonresident S corporation,  
937 or nonresident trust under this chapter.

938 (ii) A nonresident pass-through entity taxpayer is not required to file a return if:

939 (A) the nonresident pass-through entity taxpayer does not have:

940 (I) for a nonresident pass-through entity taxpayer that is classified as a C corporation  
941 for federal income tax purposes, unadjusted income as defined in Section 59-7-101 derived  
942 from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's  
943 share of income, gain, loss, deduction, or credit of the pass-through entity;

944 (II) for a nonresident pass-through entity taxpayer that is classified as an individual,  
945 partnership, or S corporation for federal income tax purposes, adjusted gross income derived  
946 from or connected with Utah sources, except for the nonresident pass-through entity taxpayer's  
947 share of income, gain, loss, deduction, or credit of the pass-through entity; or

948 (III) for a nonresident pass-through entity taxpayer that is classified as an estate or a  
949 trust for federal income tax purposes, unadjusted income as defined in Section 59-10-103  
950 derived from or connected with Utah sources, except for the nonresident pass-through entity  
951 taxpayer's share of income, gain, loss, deduction, or credit of the pass-through entity;

952 (B) the nonresident pass-through entity taxpayer does not seek to claim a tax credit  
953 allowed against a tax imposed under:

954 (I) Chapter 7, Corporate Franchise and Income Taxes; or  
955 (II) this chapter;  
956 (C) the pass-through entity pays or withholds a tax on behalf of the nonresident  
957 pass-through entity taxpayer and remits that tax to the commission:  
958 (I) in accordance with Section 59-10-1403.2; and  
959 (II) if a nonresident pass-through entity taxpayer is classified as a C corporation for  
960 federal income tax purposes, in an amount that is equal to or greater than the minimum tax  
961 under Section 59-7-104; and  
962 (D) the nonresident pass-through entity taxpayer is not a member of a unitary group as  
963 defined in Section 59-7-101 that is required to file a return in this state.  
964 (iii) A nonresident pass-through entity taxpayer that is not otherwise required to file a  
965 return under this Subsection (3) may file a return under:  
966 (A) Chapter 7, Corporate Franchise and Income Taxes; or  
967 (B) this chapter.  
968 (iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
969 the commission may make rules for a pass-through entity taxpayer, except for a pass-through  
970 entity taxpayer who is a resident individual, to file a return under this section if two or more  
971 pass-through entities pay or withhold a tax in accordance with Section 59-10-1403.2 on behalf  
972 of the pass-through entity taxpayer.  
973 Section 18. Section **59-10-1403.2** is enacted to read:  
974 **59-10-1403.2. Pass-through entity payment or withholding of tax on behalf of a**  
975 **pass-through entity taxpayer -- Exceptions to payment or withholding requirement --**  
976 **Procedures and requirements -- Failure to pay or withhold a tax on behalf of a**  
977 **pass-through entity taxpayer.**  
978 (1) (a) Except as provided in Subsection (1)(b), for a taxable year, a pass-through  
979 entity shall pay or withhold a tax:  
980 (i) on:  
981 (A) the business income of the pass-through entity; and

982           (B) the nonbusiness income of the pass-through entity derived from or connected with  
983 Utah sources; and  
984           (ii) on behalf of a pass-through entity taxpayer.  
985           (b) A pass-through entity is not required to pay or withhold a tax under Subsection  
986 (1)(a):  
987           (i) on behalf of a pass-through entity taxpayer who is a resident individual;  
988           (ii) if the pass-through entity is an organization exempt from taxation under  
989 Subsection 59-7-102(1)(a); or  
990           (iii) if the pass-through entity is a publicly traded partnership:  
991           (A) as defined in Section 7704(b), Internal Revenue Code;  
992           (B) that is classified as a partnership for federal income tax purposes; and  
993           (C) that files an annual information return reporting the following with respect to each  
994 partner of the publicly traded partnership with income derived from or connected with Utah  
995 sources that exceeds \$500 in a taxable year:  
996           (I) the partner's name;  
997           (II) the partner's address;  
998           (III) the partner's taxpayer identification number; and  
999           (IV) other information required by the commission.  
1000           (2) (a) Subject to Subsection (2)(b), the tax a pass-through entity shall pay or withhold  
1001 on behalf of a pass-through entity taxpayer for a taxable year is an amount:  
1002           (i) determined by the commission by rule made in accordance with Title 63G, Chapter  
1003 3, Utah Administrative Rulemaking Act; and  
1004           (ii) that the commission estimates will be sufficient to pay the tax liability of the  
1005 pass-through entity taxpayer under this chapter with respect to the income described in  
1006 Subsection (1)(a)(i) of that pass-through entity for the taxable year.  
1007           (b) The rules the commission makes in accordance with Subsection (2)(a):  
1008           (i) except as provided in Subsection (2)(c):  
1009           (A) shall:

1010 (I) for a pass-through entity except for a pass-through entity that is an S corporation,  
1011 take into account items of income, gain, loss, deduction, and credit as analyzed on the  
1012 schedule for reporting partners' distributive share items as part of the federal income tax return  
1013 for the pass-through entity; or

1014 (II) for a pass-through entity that is an S corporation, take into account items of  
1015 income, gain, loss, deduction, and credit as reconciled on the schedule for reporting  
1016 shareholders' pro rata share items as part of the federal income tax return for the pass-through  
1017 entity; and

1018 (B) notwithstanding Subsection (2)(b)(ii)(D), take into account the refundable tax  
1019 credit provided in Section 59-6-102; and

1020 (ii) may not take into account the following items if taking those items into account  
1021 does not result in an accurate estimate of a pass-through entity taxpayer's tax liability under  
1022 this chapter for the taxable year:

1023 (A) a capital loss;

1024 (B) a passive loss;

1025 (C) another item of deduction or loss if that item of deduction or loss is generally  
1026 subject to significant reduction or limitation in calculating:

1027 (I) for a pass-through entity taxpayer that is classified as a C corporation for federal  
1028 income tax purposes, unadjusted income as defined in Section 59-7-101;

1029 (II) for a pass-through entity that is classified as an individual, partnership, or S  
1030 corporation for federal income tax purposes, adjusted gross income; or

1031 (III) for a pass-through entity that is classified as an estate or a trust for federal income  
1032 tax purposes, unadjusted income as defined in Section 59-10-103; or

1033 (D) a tax credit allowed against a tax imposed under:

1034 (I) Chapter 7, Corporate Franchise and Income Taxes; or

1035 (II) this chapter.

1036 (c) The rules the commission makes in accordance with Subsection (2)(a) may  
1037 establish a method for taking into account items of income, gain, loss, deduction, or credit of a

1038 pass-through entity if:

1039 (i) for a pass-through entity except for a pass-through entity that is an S corporation,  
1040 the pass-through entity does not analyze the items of income, gain, loss, deduction, or credit  
1041 on the schedule for reporting partners' distributive share items as part of the federal income tax  
1042 return for the pass-through entity; or

1043 (ii) for a pass-through entity that is an S corporation, the pass-through entity does not  
1044 reconcile the items of income, gain, loss, deduction, or credit on the schedule for reporting  
1045 shareholders' pro rata share items as part of the federal income tax return for the pass-through  
1046 entity.

1047 (3) A pass-through entity shall remit to the commission the tax the pass-through entity  
1048 pays or withholds on behalf of a pass-through entity taxpayer under this section:

1049 (a) on or before the due date of the pass-through entity's return, not including  
1050 extensions; and

1051 (b) on a form provided by the commission.

1052 (4) A pass-through entity shall provide a statement to a pass-through entity taxpayer  
1053 on behalf of whom the pass-through entity pays or withholds a tax under this section showing  
1054 the amount of tax the pass-through entity pays or withholds under this section for the taxable  
1055 year on behalf of the pass-through entity taxpayer.

1056 (5) Notwithstanding Section 59-1-401 or 59-1-402, the commission may not collect an  
1057 amount under this section for a taxable year from a pass-through entity and shall waive a  
1058 penalty or interest on that amount if:

1059 (a) the pass-through entity fails to pay or withhold the tax on the amount as required  
1060 by this section on behalf of the pass-through entity taxpayer;

1061 (b) the pass-through entity taxpayer:

1062 (i) files a return on or before the due date for filing the pass-through entity's return,  
1063 including extensions; and

1064 (ii) on or before the due date including extensions described in Subsection (5)(b)(i),  
1065 pays the tax on the amount for the taxable year:

1066 (A) if the pass-through entity taxpayer is classified as a C corporation for federal  
 1067 income tax purposes, under Chapter 7, Corporate Franchise and Income Taxes; or

1068 (B) if the pass-through entity taxpayer is classified as an estate, individual,  
 1069 partnership, S corporation, or a trust for federal income tax purposes, under this chapter; and

1070 (c) the pass-through entity applies to the commission.

1071 Section 19. Section **59-10-1404** is amended to read:

1072 **59-10-1404. Character of an item of income, gain, loss, deduction, or credit.**

1073 ~~[(1) Each item of income, gain, loss, or deduction of a pass-through entity has the~~  
 1074 ~~same character for a taxpayer under this chapter as that item of income, gain, loss, or~~  
 1075 ~~deduction has for federal income tax purposes.]~~

1076 ~~[(2) If] Regardless of whether or how an item of income, gain, loss, [or] deduction~~  
 1077 ~~[described in Subsection (1) is not], or credit is characterized for federal income tax purposes,~~  
 1078 ~~that item of income, gain, loss, [or] deduction [has the same character for a taxpayer], or credit~~  
 1079 ~~is from the same source and incurred in the same manner for a pass-through entity taxpayer as~~  
 1080 ~~if the item of income, gain, loss, [or] deduction, or credit is:~~

1081 ~~[(a)] (1) realized directly from the source from which the item of income, gain, loss,~~  
 1082 ~~[or] deduction, or credit is realized by the pass-through entity; or~~

1083 ~~[(b)] (2) incurred in the same manner as incurred by the pass-through entity.~~

1084 ~~[(3) In determining state taxable income of a resident taxpayer, any addition or~~  
 1085 ~~subtraction described in Section 59-10-114 that relates to an item of income, gain, loss, or~~  
 1086 ~~deduction of a pass-through entity shall be made in accordance with the taxpayer's distributive~~  
 1087 ~~share:]~~

1088 ~~[(a) of the item to which the addition or subtraction relates; and]~~

1089 ~~[(b) for federal income tax purposes.]~~

1090 ~~[(4) If a taxpayer's distributive share of an item of income, gain, loss, or deduction~~  
 1091 ~~described in Subsection (3) is not required to be taken into account separately for federal~~  
 1092 ~~income tax purposes, the taxpayer's distributive share of that item of income, gain, loss, or~~  
 1093 ~~deduction shall be determined in accordance with that taxpayer's distributive share:]~~

1094 ~~[(a) of income or loss relating to the pass-through entity generally; and]~~  
1095 ~~[(b) for federal income tax purposes.]~~

1096 Section 20. Section **59-10-1404.5** is enacted to read:

1097 **59-10-1404.5. Resident pass-through entity taxpayer's share of an addition,**  
1098 **subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or**  
1099 **credit of a pass-through entity.**

1100 (1) In determining the taxable income of a resident pass-through entity taxpayer, an  
1101 addition, subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or  
1102 credit of a pass-through entity shall be made in accordance with this section.

1103 (2) For a resident pass-through entity taxpayer of a pass-through entity except for a  
1104 pass-through entity that is an S corporation, the resident pass-through entity taxpayer's share  
1105 of an addition, subtraction, or adjustment that relates to an item of income, gain, loss,  
1106 deduction, or credit is:

1107 (a) if the item of income, gain, loss, deduction, or credit is required to be taken into  
1108 account separately for federal income tax purposes, the resident pass-through entity taxpayer's  
1109 distributive share of the item of income, gain, loss, deduction, or credit:

1110 (i) for federal income tax purposes; and

1111 (ii) determined under Section 704 et seq., Internal Revenue Code; or

1112 (b) if the item of income, gain, loss, deduction, or credit is not required to be taken  
1113 into account separately for federal income tax purposes, determined in accordance with the  
1114 resident pass-through entity taxpayer's distributive share of income, gain, loss, deduction, or  
1115 credit:

1116 (i) relating to the pass-through entity generally;

1117 (ii) for federal income tax purposes; and

1118 (iii) under Section 704 et seq., Internal Revenue Code.

1119 (3) For a resident pass-through entity taxpayer of a pass-through entity that is an S  
1120 corporation, the resident pass-through entity taxpayer's share of an addition, subtraction, or  
1121 adjustment that relates to an item of income, gain, loss, deduction, or credit is:

1122 (a) if the item of income, gain, loss, deduction, or credit is required to be taken into  
 1123 account separately for federal income tax purposes, the resident pass-through entity taxpayer's  
 1124 pro rata share of the item of income, gain, loss, deduction, or credit:

- 1125 (i) for federal income tax purposes; and
- 1126 (ii) determined under Section 1366 et seq., Internal Revenue Code; or

1127 (b) if the item of income, gain, loss, deduction, or credit is not required to be taken  
 1128 into account separately for federal income tax purposes, determined in accordance with the  
 1129 resident pass-through entity taxpayer's pro rata share of the item of income, gain, loss,  
 1130 deduction, or credit:

- 1131 (i) relating to the pass-through entity generally;
- 1132 (ii) for federal income tax purposes; and
- 1133 (iii) under Section 1366 et seq., Internal Revenue Code.

1134 Section 21. Section **59-10-1405** is amended to read:

1135 **59-10-1405. Nonresident pass-through entity taxpayer's share of an addition,**  
 1136 **subtraction, or adjustment that relates to an item of income, gain, loss, deduction, or**  
 1137 **credit of a pass-through entity -- In determining source of nonresident pass-through**  
 1138 **entity taxpayer's income certain provisions of pass-through entity agreement may not be**  
 1139 **considered -- Rulemaking authority.**

1140 ~~[(1) Subject to Subsection (2), the adjusted gross income of a nonresident taxpayer~~  
 1141 ~~shall be adjusted by only that portion of the taxpayer's distributive share of an item of income,~~  
 1142 ~~gain, loss, or deduction of a pass-through entity derived from or connected with sources in this~~  
 1143 ~~state.]~~

1144 ~~[(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~  
 1145 ~~the commission may make rules for determining the adjustment required by Subsection (1) if~~  
 1146 ~~those rules are consistent with the principles of Section 59-10-116.]~~

1147 (1) (a) Except as provided in Subsection (3), in determining the taxable income of a  
 1148 nonresident pass-through entity taxpayer, an addition, subtraction, or adjustment that relates to  
 1149 an item of income, gain, loss, deduction, or credit of a pass-through entity shall be made in

1150 accordance with this Subsection (1).

1151 (b) For a nonresident pass-through entity taxpayer of a pass-through entity except for a  
1152 pass-through entity that is an S corporation, the nonresident pass-through entity taxpayer's  
1153 share of an addition, subtraction, or adjustment that relates to an item of income, gain, loss,  
1154 deduction, or credit is:

1155 (i) if the item of income, gain, loss, deduction, or credit is required to be taken into  
1156 account separately for federal income tax purposes, the nonresident pass-through entity  
1157 taxpayer's distributive share of the item of income, gain, loss, deduction, or credit:

1158 (A) for federal income tax purposes;

1159 (B) determined under Section 704 et seq., Internal Revenue Code; and

1160 (C) derived from or connected with Utah sources; or

1161 (ii) if the item of income, gain, loss, deduction, or credit is not required to be taken  
1162 into account separately for federal income tax purposes, determined in accordance with the  
1163 nonresident pass-through entity taxpayer's distributive share of income, gain, loss, deduction,  
1164 or credit:

1165 (A) relating to the pass-through entity generally;

1166 (B) for federal income tax purposes;

1167 (C) under Section 704 et seq., Internal Revenue Code; and

1168 (D) derived from or connected with Utah sources.

1169 (c) For a nonresident pass-through entity taxpayer of a pass-through entity that is an S  
1170 corporation, the nonresident pass-through entity taxpayer's share of an addition, subtraction, or  
1171 adjustment that relates to an item of income, gain, loss, deduction, or credit is:

1172 (i) if the item of income, gain, loss, deduction, or credit is required to be taken into  
1173 account separately for federal income tax purposes, the nonresident pass-through entity  
1174 taxpayer's pro rata share of the item of income, gain, loss, deduction, or credit:

1175 (A) for federal income tax purposes;

1176 (B) determined under Section 1366 et seq., Internal Revenue Code; and

1177 (C) derived from or connected with Utah sources; or

1178 (ii) if the item of income, gain, loss, deduction, or credit is not required to be taken  
 1179 into account separately for federal income tax purposes, determined in accordance with the  
 1180 nonresident pass-through entity taxpayer's pro rata share of the item of income, gain, loss,  
 1181 deduction, or credit:

- 1182 (A) relating to the pass-through entity generally;
- 1183 (B) for federal income tax purposes;
- 1184 (C) under Section 1366 et seq., Internal Revenue Code; and
- 1185 (D) derived from or connected with Utah sources.

1186 ~~[(3)]~~ (2) In determining the source of a nonresident pass-through entity taxpayer's  
 1187 income, the following provisions in a pass-through entity agreement may not be considered:

- 1188 ~~[(a) a provision that characterizes a payment to the taxpayer as being for:]~~
- 1189 ~~[(i) a service; or]~~
- 1190 ~~[(ii) the use of capital;]~~
- 1191 ~~[(b) except as provided in Subsection (5);]~~

1192 (a) a provision that allocates to the nonresident pass-through entity taxpayer, as  
 1193 income ~~[or]~~, gain, or credit from a source outside this state, a greater proportion of the  
 1194 nonresident pass-through entity taxpayer's ~~[distributive]~~ share of income ~~[or]~~, gain, or credit of  
 1195 the pass-through entity than the ratio of income ~~[or]~~, gain, or credit of the pass-through entity  
 1196 from sources outside this state to income ~~[or]~~, gain, or credit of the pass-through entity from  
 1197 all sources; or

1198 ~~[(c) except as provided in Subsection (5);]~~

1199 (b) a provision that allocates to the nonresident pass-through entity taxpayer a greater  
 1200 proportion of an item of loss or deduction of the pass-through entity derived from or connected  
 1201 with Utah sources ~~[in this state]~~ than the taxpayer's ~~[proportionate]~~ share of loss or deduction  
 1202 generally:

- 1203 (i) relating to the pass-through entity; and
- 1204 (ii) for federal income tax purposes.

1205 ~~[(4) Any addition or subtraction described in Section 59-10-114 that relates to an item~~

1206 of income, gain, loss, or deduction of a pass-through entity shall be made in accordance with  
1207 the taxpayer's distributive share:]

1208       ~~[(a) of the portion of the item of income, gain, loss, or deduction required to be added~~  
1209 ~~or subtracted under Section 59-10-114 that is derived from or connected with sources in the~~  
1210 ~~state; and]~~

1211       ~~[(b) for federal income tax purposes.]~~

1212       ~~[(5)(a) Subject to Subsection (5)(b), the~~

1213       (3) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah  
1214 Administrative Rulemaking Act, ~~[authorize the use of one or more methods, other than a~~  
1215 ~~method described in Subsections (1) through (4), for determining: (i) a nonresident taxpayer's~~  
1216 ~~portion of an]~~ authorize the use of a calculation other than the calculation provided in  
1217 Subsection (1), for determining a nonresident pass-through entity taxpayer's share of an  
1218 addition, subtraction, or adjustment that relates to an item of income, gain, loss, ~~[or]~~  
1219 deduction, or credit of a pass-through entity derived from or connected with ~~[sources in the~~  
1220 ~~state; and]~~ Utah sources if:

1221       ~~[(i) the portion of an item of income, gain, loss, or deduction required to be added or~~  
1222 ~~subtracted under Section 59-10-114 that is derived from or connected with sources in the~~  
1223 ~~state:]~~

1224       ~~[(b) For purposes of Subsection (5)(a), the commission may authorize the use of one~~  
1225 ~~or more methods, other than a method described in Subsections (1) through (4), if:]~~

1226       ~~[(i) the commission finds that the use of the method is appropriate and equitable; and]~~  
1227       ~~[(ii) the taxpayer applies to the commission.]~~

1228       ~~[(6)(a) A nonresident taxpayer's distributive share of an item of income, gain, loss, or~~  
1229 ~~deduction shall be determined in accordance with the principles of Subsections 59-10-1404(3)~~  
1230 ~~and (4):]~~

1231       ~~[(b) The character of an item of income, gain, loss, or deduction for a nonresident~~  
1232 ~~taxpayer shall be determined in accordance with the principles of Subsections 59-10-1404(1)~~  
1233 ~~and (2):]~~

1234 (a) the nonresident pass-through entity taxpayer applies to the commission; and  
1235 (b) the commission finds that the use of the calculation is appropriate and equitable.

1236 Section 22. **Repealer.**

1237 This bill repeals:

1238 Section **48-2c-117, Taxation of limited liability companies.**

1239 Section **59-7-702, Taxation of shareholders.**

1240 Section **59-7-703, Payment or withholding of tax on behalf of nonresident**  
1241 **shareholders -- Rate.**

1242 Section **59-7-704, Amount taxable.**

1243 Section 23. **Effective date -- Retrospective operation.**

1244 This bill:

1245 (1) if approved by two-thirds of all the members elected to each house, takes effect  
1246 upon approval by the governor, or the day following the constitutional time limit of Utah  
1247 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
1248 the date of veto override; and

1249 (2) has retrospective operation for a taxable year beginning on or after January 1,  
1250 2009.

1251 Section 24. **Revisor instructions.**

1252 It is the intent of the Legislature that, in preparing the Utah Code database for  
1253 publication, the Office of Legislative Research and General Counsel shall replace the reference  
1254 in Subsection 59-7-701(9) from "this bill" to the bill's designated chapter and section number  
1255 in the Laws of Utah.