

**ALLOCATION AND APPORTIONMENT OF INCOME AND
DEDUCTION OF A NET LOSS**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: John Dougall

LONG TITLE

General Description:

This bill amends the Revenue and Taxation title to address the allocation and apportionment of income and the deduction of a net loss by an acquired corporation.

Highlighted Provisions:

This bill:

- ▶ amends provisions in the Multistate Tax Compact governing allocation and apportionment of income;
- ▶ defines terms;
- ▶ addresses the apportionment of business income to the state;
- ▶ addresses the time period during which a taxpayer's determination to use a certain formula to apportion business income to the state is in effect;
- ▶ addresses the amount of net loss a corporation that is acquired by a unitary group may deduct; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation for a taxable year beginning on or after January 1, 2010.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **59-1-801**, as renumbered and amended by Laws of Utah 1987, Chapter 3

31 **59-7-110**, as last amended by Laws of Utah 2008, Chapter 105

32 **59-7-302**, as last amended by Laws of Utah 2008, Chapter 283

33 **59-7-311**, as last amended by Laws of Utah 2008, Chapter 382

33a **§→ 59-7-319, as last amended by Laws of Utah 2008, Chapters 105 and 283 ←§**



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

36 Section 1. Section **59-1-801** is amended to read:

37 **59-1-801. Purpose of compact -- Definitions -- Elements of income tax laws --**
38 **Allocation and apportionment of income -- Elements of sales and use tax laws -- The**
39 **commission -- Uniform regulations and forms -- Interstate audits -- Arbitration -- Entry**
40 **into force and withdrawal -- Effect on other laws and jurisdiction -- Construction and**
41 **severability.**

42 The "Multistate Tax Compact" is hereby enacted into law and entered into with all
43 jurisdictions legally joining therein, in the form substantially as follows:

44 **ARTICLE I. PURPOSES**

45 The purposes of this compact are to:

- 46 1. Facilitate proper determination of state and local tax liability of multistate taxpayers,
- 47 including the equitable apportionment of tax bases and settlement of apportionment disputes.
- 48 2. Promote uniformity or compatibility in significant components of tax systems.
- 49 3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in
- 50 other phases of tax administration.
- 51 4. Avoid duplicative taxation.

52 **ARTICLE II. DEFINITIONS**

53 As used in this compact:

- 54 1. "State" means a state of the United States, the District of Columbia, the
- 55 Commonwealth of Puerto Rico, or any territory or possession of the United States.
- 56 2. "Subdivision" means any governmental unit or special district of a state.
- 57 3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit
- 58 or agency, or person acting as a business entity in more than one state.

59 4. "Income tax" means a tax imposed on or measured by net income including any tax
60 imposed on or measured by an amount arrived at by deducting expenses from gross income,
61 one or more forms of which expenses are not specifically and directly related to particular
62 transactions.

63 5. "Capital stock tax" means a tax measured in any way by the capital of a corporation
64 considered in its entirety.

65 6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or
66 measured by the gross volume of business, in terms of gross receipts or in other terms, and in
67 the determination of which no deduction is allowed which would constitute the tax an income
68 tax.

69 7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of
70 ownership, possession, or custody of tangible personal property or the rendering of services
71 measured by the price of the tangible personal property transferred or services rendered and
72 which is required by state or local law to be separately stated from the sales price by the seller,
73 or which is customarily separately stated from the sales price, but does not include a tax
74 imposed exclusively on the sale of a specifically identified commodity or article or class of
75 commodities or articles.

76 8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on
77 or with respect to the exercise or enjoyment of any right or power over tangible personal
78 property incident to the ownership, possession, or custody of that property or the leasing of that
79 property from another including any consumption, keeping, retention, or other use of tangible
80 personal property, and (b) is complementary to a sales tax.

81 9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax,
82 and any other tax which has a multistate impact, except that the provisions of Articles III, IV,
83 and V of this compact shall apply only to the taxes specifically designated therein and the
84 provisions of Article IX of this compact shall apply only in respect to determinations pursuant
85 to Article IV.

86 ARTICLE III. ELEMENTS OF INCOME TAX LAWS

87 [~~Taxpayer Option, State~~] Allocation and Apportionment
88 [~~and Local Taxes~~] of Income

89 1. [~~Any taxpayer subject to an income tax whose income is subject to apportionment~~

90 and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of
 91 subdivisions in two or more party states may elect to apportion and allocate his income in the
 92 manner provided by the laws of such state or by the laws of such states and subdivisions
 93 without reference to this compact, or may elect to apportion and allocate in accordance with
 94 Article IV. This election for any tax year may be made in all party states or subdivisions
 95 thereof or in any one or more of the party states or subdivisions thereof without reference to the
 96 election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions
 97 shall be considered separately from state taxes and the apportionment and allocation also may
 98 be applied to the entire tax base. In no instance wherein Article IV is employed for all
 99 subdivisions of a state may the sum of all apportionments and allocations to subdivisions
 100 within a state be greater than the apportionment and allocation that would be assignable to that
 101 state if the apportionment or allocation were being made with respect to a state income tax.]
 102 Notwithstanding Article IV, income subject to allocation and apportionment in Utah is
 103 governed by Chapter 7, Part 3, Allocation and Apportionment of Income - Utah UDITPA
 104 Provisions.

Taxpayer Option, Short Form

106 2. Each party state or any subdivision thereof which imposes an income tax shall
 107 provide by law that any taxpayer required to file a return, whose only activities within the
 108 taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible
 109 personal property, and whose dollar volume of gross sales made during the tax year within the
 110 state or subdivision, as the case may be, is not in excess of \$100,000, may elect to report and
 111 pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall
 112 produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax
 113 Commission, not more than once in five years, may adjust the \$100,000 figure in order to
 114 reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon
 115 the adoption by the commission, shall replace the \$100,000 figure specifically provided herein.
 116 Each party state and subdivision thereof may make the same election available to taxpayers
 117 additional to those specified in this paragraph.

Coverage

119 3. Nothing in this article relates to the reporting or payment of any tax other than an
 120 income tax.

121 ARTICLE IV. DIVISION OF INCOME

122 1. As used in this article, unless the context otherwise requires:

123 (a) "Business income" means income arising from transactions and activity in the
124 regular course of the taxpayer's trade or business and includes income from tangible and
125 intangible property if the acquisition, management, and disposition of the property constitute
126 integral parts of the taxpayer's regular trade or business operations.

127 (b) "Commercial domicile" means the principal place from which the trade or business
128 of the taxpayer is directed or managed.

129 (c) "Compensation" means wages, salaries, commissions and any other form of
130 remuneration paid to employees for personal services.

131 (d) "Financial organization" means any bank, trust company, savings bank, industrial
132 bank, land bank, safe deposit company, private banker, savings and loan association, credit
133 union, cooperative bank, small loan company, sales finance company, investment company, or
134 any type of insurance company.

135 (e) "Nonbusiness income" means all income other than business income.

136 (f) "Public utility" means any business entity (1) which owns or operates any plant,
137 equipment, property, franchise, or license for the transmission of communications,
138 transportation of goods or persons, except by pipeline, or the production, transmission, sale,
139 delivery, or furnishing of electricity, water, or steam, and (2) whose rates of charges for goods
140 or services have been established or approved by a federal, state, or local government or
141 governmental agency.

142 (g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of
143 this article.

144 (h) "State" means any state of the United States, the District of Columbia, the
145 Commonwealth of Puerto Rico, any territory or possession of the United States, and any
146 foreign country or political subdivision thereof.

147 (i) "This state" means the state in which the relevant tax return is filed or, in the case of
148 application of this article to the apportionment and allocation of income for local tax purposes,
149 the subdivision or local taxing district in which the relevant tax return is filed.

150 2. Any taxpayer having income from business activity which is taxable both within and
151 without this state, shall allocate and apportion his net income as provided in this article.

152 3. For purposes of allocation and apportionment of income under this article, a
153 taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a
154 franchise tax measured by net income, a franchise tax for the privilege of doing business, or a
155 corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax
156 regardless of whether, in fact, the state does or does not.

157 4. Rents and royalties from real or tangible personal property, capital gains, interests,
158 dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness
159 income, shall be allocated as provided in paragraphs 5 through 8 of this article.

160 5. (a) Net rents and royalties from real property located in this state are allocable to this
161 state.

162 (b) Net rents and royalties from tangible personal property are allocable to this state (1)
163 if and to the extent that the property is utilized in this state, or (2) in their entirety if the
164 taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws
165 of or taxable in the state in which the property is utilized.

166 (c) The extent of utilization of tangible personal property in a state is determined by
167 multiplying the rents and royalties by a fraction, the numerator of which is the number of days
168 of physical location of the property in the state during the rental or royalty period in the taxable
169 year and the denominator of which is the number of days of physical location of the property
170 everywhere during all rental or royalty periods in the taxable year. If the physical location of
171 the property during the rental or royalty period is unknown or unascertainable by the taxpayer,
172 tangible personal property is utilized in the state in which the property was located at the time
173 the rental or royalty payer obtained possession.

174 6. (a) Capital gains and losses from sales of real property located in this state are
175 allocable to this state.

176 (b) Capital gains and losses from sales of tangible personal property are allocable to
177 this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's
178 commercial domicile is in this state and the taxpayer is not taxable in the state in which the
179 property had a situs.

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

182 7. Interest and dividends are allocable to this state if the taxpayer's commercial

183 domicile is in this state.

184 8. (a) Patent and copyright royalties are allocable to this state (1) if and to the extent
185 that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that
186 the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable
187 and the taxpayer's commercial domicile is in this state.

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

193 (c) A copyright is utilized in a state to the extent that printing or other publication
194 originates in the state. If the basis of receipts from copyright royalties does not permit
195 allocation to states or if the accounting procedures do not reflect states of utilization, the
196 copyright is utilized in the state in which the taxpayer's commercial domicile is located.

197 9. All business income shall be apportioned to this state by multiplying the income by a
198 fraction~~[, the numerator of which is the property factor plus the payroll factor plus the sales~~
199 ~~factor and the denominator of which is three]~~ that may include as the numerator of the fraction
200 the property factor, the payroll factor, the sales factor, or the sum of two or more of these
201 factors.

202 10. The property factor is a fraction, the numerator of which is the average value of the
203 taxpayer's real and tangible personal property owned or rented and used in this state during the
204 tax period and the denominator of which is the average value of all the taxpayer's real and
205 tangible personal property owned or rented and used during the tax period.

206 11. Property owned by the taxpayer is valued at its original cost. Property rented by the
207 taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual
208 rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from
209 subrentals.

210 12. The average value of property shall be determined by averaging the values at the
211 beginning and ending of the tax period but the tax administrator may require the averaging of
212 monthly values during the tax period if reasonably required to reflect properly the average
213 value of the taxpayer's property.

214 13. The payroll factor is a fraction, the numerator of which is the total amount paid in
215 this state during the tax period by the taxpayer for compensation and the denominator of which
216 is the total compensation paid everywhere during the tax period.

217 14. Compensation is paid in this state if:

218 (a) the individual's service is performed entirely within the state;

219 (b) the individual's service is performed both within and without the state, but the
220 service performed without the state is incidental to the individual's service within the state; or

221 (c) some of the service is performed in the state and (1) the base of operations or, if
222 there is no base of operations, the place from which the service is directed or controlled is in
223 the state, or (2) the base of operations or the place from which the service is directed or
224 controlled is not in any state in which some part of the service is performed, but the individual's
225 residence is in this state.

226 15. The sales factor is a fraction, the numerator of which is the total sales of the
227 taxpayer in this state during the tax period and the denominator of which is the total sales of the
228 taxpayer everywhere during the tax period.

229 16. Sales of tangible personal property are in this state if:

230 (a) the property is delivered or shipped to a purchaser, other than the United States
231 government, within this state regardless of the f.o.b. point or other conditions of the sale; or

232 (b) the property is shipped from an office, store, warehouse, factory, or other place of
233 storage in this state and (1) the purchaser is the United States government, or (2) the taxpayer is
234 not taxable in the state of the purchaser.

235 17. ~~[Sales, other than sales of tangible personal property, are in this state if:]~~

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

237 ~~[(b) the income-producing activity is performed both in and outside this state and a~~
238 ~~greater proportion of the income-producing activity is performed in this state than in any other~~
239 ~~state, based on costs of performance.] Whether a receipt, rent, royalty, or sale in connection
240 with other than tangible personal property is considered to be in this state is determined in
241 accordance with Section 59-7-319.~~

242 18. If the allocation and apportionment provisions of this article do not fairly represent
243 the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the
244 tax administrator may require, in respect to all or any part of the taxpayer's business activity, if

245 reasonable:

246 (a) separate accounting;

247 (b) the exclusion of any one or more of the factors;

248 (c) the inclusion of one or more additional factors which will fairly represent the

249 taxpayer's business activity in this state; or

250 (d) the employment of any other method to effectuate an equitable allocation and

251 apportionment of the taxpayer's income.

252 ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS

253 Tax Credit

254 1. Each purchaser liable for a use tax on tangible personal property shall be entitled to
255 full credit for the combined amount or amounts of legally imposed sales or use taxes paid by
256 him with respect to the same property to another state and any subdivision thereof. The credit
257 shall be applied first against the amount of any use tax due the state, and any unused portion of
258 the credit shall then be applied against the amount of any use tax due a subdivision.

259 Exemption Certificates, Vendors May Rely

260 2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or
261 other exemption certificate or other written evidence of exemption authorized by the
262 appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a
263 sales or use tax with respect to the transaction.

264 ARTICLE VI. THE COMMISSION

265 Organization and Management

266 1. (a) The Multistate Tax Commission is hereby established. It shall be composed of
267 one "member" from each party state who shall be the head of the state agency charged with the
268 administration of the types of taxes to which this compact applies. If there is more than one
269 such agency the state shall provide by law for the selection of the commission member from
270 the heads of the relevant agencies. State law may provide that a member of the commission be
271 represented by an alternate but only if there is on file with the commission written notification
272 of the designation and identity of the alternate. The attorney general of each party state or his
273 designee, or other counsel if the laws of the party state specifically provide, shall be entitled to
274 attend the meetings of the commission, but shall not vote. Such attorneys general, designees,
275 or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this

276 article.

277 (b) Each party state shall provide by law for the selection of representatives from its
278 subdivisions affected by this compact to consult with the commission member from that state.

279 (c) Each member shall be entitled to one vote. The commission shall not act unless a
280 majority of the members are present, and no action shall be binding unless approved by a
281 majority of the total number of members.

282 (d) The commission shall adopt an official seal to be used as it may provide.

283 (e) The commission shall hold an annual meeting and such other regular meetings as
284 its bylaws may provide and such special meetings as its executive committee may determine.
285 The commission bylaws shall specify the dates of the annual and any other regular meetings,
286 and shall provide for the giving of notice of annual, regular, and special meetings. Notices of
287 special meetings shall include the reasons therefor and an agenda of the items to be considered.

288 (f) The commission shall elect annually, from among its members, a chairman, a
289 vice-chairman, and a treasurer. The commission shall appoint an executive director who shall
290 serve at its pleasure, and it shall fix his duties and compensation. The executive director shall
291 be secretary of the commission. The commission shall make provision for the bonding of such
292 of its officers and employees as it may deem appropriate.

293 (g) Irrespective of the civil service, personnel, or other merit system laws of any party
294 state, the executive director shall appoint or discharge such personnel as may be necessary for
295 the performance of the functions of the commission and shall fix their duties and
296 compensation. The commission bylaws shall provide for personnel policies and programs.

297 (h) The commission may borrow, accept, or contract for the services of personnel from
298 any state, the United States, or any other governmental entity.

299 (i) The commission may accept for any of its purposes and functions any and all
300 donations and grants of money, equipment, supplies, materials, and services, conditional or
301 otherwise, from any governmental entity, and may utilize and dispose of the same.

302 (j) The commission may establish one or more offices for the transacting of its
303 business.

304 (k) The commission shall adopt bylaws for the conduct of its business. The
305 commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and
306 any amendments thereto with the appropriate agency or officer in each of the party states.

307 (l) The commission annually shall make to the governor and legislature of each party
308 state a report covering its activities for the preceding year. Any donation or grant accepted by
309 the commission or services borrowed shall be reported in the annual report of the commission,
310 and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or
311 services borrowed and the identity of the donor or lender. The commission may make
312 additional reports as it may deem desirable.

313 Committees

314 2. (a) To assist in the conduct of its business when the full commission is not meeting,
315 the commission shall have an executive committee of seven members, including the chairman,
316 vice-chairman, treasurer, and four other members elected annually by the commission. The
317 executive committee, subject to the provisions of this compact and consistent with the policies
318 of the commission, shall function as provided in the bylaws of the commission.

319 (b) The commission may establish advisory and technical committees, membership on
320 which may include private persons and public officials, in furthering any of its activities. Such
321 committees may consider any matter of concern to the commission, including problems of
322 special interest to any party state and problems dealing with particular types of taxes.

323 (c) The commission may establish such additional committees as its bylaws may
324 provide.

325 Powers

326 3. In addition to powers conferred elsewhere in this compact, the commission shall
327 have power to:

328 (a) study state and local tax systems and particular types of state and local taxes;

329 (b) develop and recommend proposals for an increase in uniformity or compatibility of
330 state and local tax laws with a view toward encouraging the simplification and improvement of
331 state and local tax law and administration;

332 (c) compile and publish information as in its judgment would assist the party states in
333 implementation of the compact and taxpayers in complying with state and local tax laws; and

334 (d) do all things necessary and incidental to the administration of its functions pursuant
335 to this compact.

336 Finance

337 4. (a) The commission shall submit to the governor or designated officer or officers of

338 each party state a budget of its estimated expenditures for such period as may be required by
339 the laws of that state for presentation to the legislature thereof.

340 (b) Each of the commission's budgets of estimated expenditures shall contain specific
341 recommendations of the amounts to be appropriated by each of the party states. The total
342 amount of appropriations requested under any such budget shall be apportioned among the
343 party states as follows: one-tenth in equal shares; and the remainder in proportion to the
344 amount of revenue collected by each party state and its subdivisions from income taxes, capital
345 stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the
346 commission shall employ such available public sources of information as, in its judgment,
347 present the most equitable and accurate comparisons among the party states. Each of the
348 commission's budgets of estimated expenditures and requests for appropriations shall indicate
349 the sources used in obtaining information employed in applying the formula contained in this
350 paragraph.

351 (c) The commission shall not pledge the credit of any party state. The commission may
352 meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of
353 this article; provided that the commission takes specific action setting aside such funds prior to
354 incurring any obligation to be met in whole or in part in such manner. Except where the
355 commission makes use of funds available to it under paragraph 1 (i), the commission shall not
356 incur any obligation prior to the allotment of funds by the party states adequate to meet the
357 same.

358 (d) The commission shall keep accurate accounts of all receipts and disbursements.
359 The receipts and disbursements of the commission shall be subject to the audit and accounting
360 procedures established under its bylaws. All receipts and disbursements of funds handled by
361 the commission shall be audited yearly by a certified or licensed public accountant and the
362 report of the audit shall be included in and become part of the annual report of the commission.

363 (e) The accounts of the commission shall be open at any reasonable time for inspection
364 by duly constituted officers of the party states and by any persons authorized by the
365 commission.

366 (f) Nothing contained in this article shall be construed to prevent commission
367 compliance with laws relating to audit or inspection of accounts by or on behalf of any
368 government contributing to the support of the commission.

369 ARTICLE VII. UNIFORM REGULATIONS AND FORMS

370 1. Whenever any two or more party states, or subdivisions of party states, have uniform
371 or similar provisions of law relating to an income tax, the commission may adopt uniform
372 regulations for any phase of the administration of such law, including assertion of jurisdiction
373 to tax, or prescribing uniform tax forms. The commission may also act with respect to the
374 provisions of Article IV of this compact.

375 2. Prior to the adoption of any regulations, the commission shall:

376 (a) as provided in its bylaws, hold at least one public hearing on due notice to all
377 affected party states and subdivisions thereof and to all taxpayers and other persons who have
378 made timely request of the commission for advance notice of its regulation-making
379 proceedings; and

380 (b) afford all affected party states and subdivisions and interested persons an
381 opportunity to submit relevant written data and views, which shall be considered fully by the
382 commission.

383 3. The commission shall submit any regulations adopted by it to the appropriate
384 officials of all party states and subdivisions to which they might apply. Each such state and
385 subdivision shall consider any such regulation for adoption in accordance with its own laws
386 and procedures.

387 ARTICLE VIII. INTERSTATE AUDITS

388 1. This article shall be in force only in those party states that specifically provide
389 therefor by statute.

390 2. Any party state or subdivision thereof desiring to make or participate in an audit of
391 any accounts, books, papers, records, or other documents may request the commission to
392 perform the audit on its behalf. In responding to the request, the commission shall have access
393 to and may examine, at any reasonable time, such accounts, books, papers, records, and other
394 documents and any relevant property or stock of merchandise. The commission may enter into
395 agreements with party states or their subdivisions for assistance in performance of the audit.
396 The commission shall make charges, to be paid by the state or local government or
397 governments for which it performs the service, for any audits performed by it in order to
398 reimburse itself for the actual costs incurred in making the audit.

399 3. The commission may require the attendance of any person within the state where it

400 is conducting an audit or part thereof at a time and place fixed by it within such state for the
401 purpose of giving testimony with respect to any account, book, paper, document, other record,
402 property, or stock of merchandise being examined in connection with the audit. If the person is
403 not within the jurisdiction, he may be required to attend for such purpose at any time and place
404 fixed by the commission within the state of which he is a resident; provided that such state has
405 adopted this article.

406 4. The commission may apply to any court having power to issue compulsory process
407 for orders in aid of its powers and responsibilities pursuant to this article and any and all such
408 courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order
409 shall be punishable as contempt of the issuing court. If the party or subject matter on account
410 of which the commission seeks an order is within the jurisdiction of the court to which
411 application is made, such application may be to a court in the state or subdivision on behalf of
412 which the audit is being made or a court in the state in which the object of the order being
413 sought is situated. The provisions of this paragraph apply only to courts in a state that has
414 adopted this article.

415 5. The commission may decline to perform any audit requested if it finds that its
416 available personnel or other resources are insufficient for the purpose or that, in the terms
417 requested, the audit is impracticable of satisfactory performance. If the commission, on the
418 basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a
419 particular time or on a particular schedule, would be of interest to a number of party states or
420 their subdivisions, it may offer to make the audit or audits, the offer to be contingent on
421 sufficient participation therein as determined by the commission.

422 6. Information obtained by any audit pursuant to this article shall be confidential and
423 available only for tax purposes to party states, their subdivisions or the United States.
424 Availability of information shall be in accordance with the laws of the states or subdivisions on
425 whose account the commission performs the audit, and only through the appropriate agencies
426 or officers of such states or subdivisions. Nothing in this article shall be construed to require
427 any taxpayer to keep records for any period not otherwise required by law.

428 7. Other arrangements made or authorized pursuant to law for cooperative audit by or
429 on behalf of the party states or any of their subdivisions are not superseded or invalidated by
430 this article.

431 8. In no event shall the commission make any charge against a taxpayer for an audit.

432 9. As used in this article, "tax," in addition to the meaning ascribed to it in Article II,
433 means any tax or license fee imposed in whole or in part for revenue purposes.

434 ARTICLE IX. ARBITRATION

435 1. Whenever the commission finds a need for settling disputes concerning
436 apportionments and allocations by arbitration, it may adopt a regulation placing this article in
437 effect, notwithstanding the provisions of Article VII.

438 2. The commission shall select and maintain an arbitration panel composed of officers
439 and employees of state and local governments and private persons who shall be knowledgeable
440 and experienced in matters of tax law and administration.

441 3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of
442 the party state or subdivision thereof are substantially identical with the relevant provisions of
443 Article IV, the taxpayer, by written notice to the commission and to each party state or
444 subdivision thereof that would be affected, may secure arbitration of an apportionment or
445 allocation, if he is dissatisfied with the final administrative determination of the tax agency of
446 the state or subdivision with respect thereto on the ground that it would subject him to double
447 or multiple taxation by two or more party states or subdivisions thereof. Each party state and
448 subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be
449 bound thereby.

450 4. The arbitration board shall be composed of one person selected by the taxpayer, one
451 by the agency or agencies involved, and one member of the commission's arbitration panel. If
452 the agencies involved are unable to agree on the person to be selected by them, such person
453 shall be selected by lot from the total membership of the arbitration panel. The two persons
454 selected for the board in the manner provided by the foregoing provisions of this paragraph
455 shall jointly select the third member of the board. If they are unable to agree on the selection,
456 the third member shall be selected by lot from among the total membership of the arbitration
457 panel. No member of a board selected by lot shall be qualified to serve if he is an officer or
458 employee or is otherwise affiliated with any party to the arbitration proceeding. Residence
459 within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation
460 within the meaning of this paragraph.

461 5. The board may sit in any state or subdivision party to the proceeding, in the state of

462 the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does
463 business, or in any place that it finds most appropriate for gaining access to evidence relevant
464 to the matter before it.

465 6. The board shall give due notice of the times and places of its hearings. The parties
466 shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses.
467 The board shall act by majority vote.

468 7. The board shall have power to administer oaths, take testimony, subpoena and
469 require the attendance of witnesses and the production of accounts, books, papers, records, and
470 other documents, and issue commissions to take testimony. Subpoenas may be signed by any
471 member of the board. In case of failure to obey a subpoena, and upon application by the board,
472 any judge of a court of competent jurisdiction of the state in which the board is sitting or in
473 which the person to whom the subpoena is directed may be found may make an order requiring
474 compliance with the subpoena, and the court may punish failure to obey the order as a
475 contempt. The provisions of this paragraph apply only in states that have adopted this article.

476 8. Unless the parties otherwise agree the expenses and other costs of the arbitration
477 shall be assessed and allocated among the parties by the board in such manner as it may
478 determine. The commission shall fix a schedule of compensation for members of arbitration
479 boards and of other allowable expenses and costs. No officer or employee of a state or local
480 government who serves as a member of a board shall be entitled to compensation therefor
481 unless he is required on account of his service to forego the regular compensation attaching to
482 his public employment, but any such board members shall be entitled to expenses.

483 9. The board shall determine the disputed apportionment or allocation and any matters
484 necessary thereto. The determinations of the board shall be final for purposes of making the
485 apportionment or allocation, but for no other purpose.

486 10. The board shall file with the commission and with each tax agency represented in
487 the proceeding: the determination of the board; the board's written statement of its reason
488 therefor; the record of the board's proceedings; and any other documents required by the
489 arbitration rules of the commission to be filed.

490 11. The commission shall publish the determinations of boards together with the
491 statements of the reasons therefor.

492 12. The commission shall adopt and publish rules of procedure and practice and shall

493 file a copy of such rules and of any amendment thereto with the appropriate agency or officer in
494 each of the party states.

495 13. Nothing contained herein shall prevent at any time a written compromise of any
496 matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

497 ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL

498 1. This compact shall enter into force when enacted into law by any seven states.
499 Thereafter, this compact shall become effective as to any other state upon its enactment thereof.
500 The commission shall arrange for notification of all party states whenever there is a new
501 enactment of the compact.

502 2. Any party state may withdraw from this compact by enacting a statute repealing the
503 same. No withdrawal shall affect any liability already incurred by or chargeable to a party state
504 prior to the time of such withdrawal.

505 3. No proceeding commenced before an arbitration board prior to the withdrawal of a
506 state and to which the withdrawing state or any subdivision thereof is a party shall be
507 discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over
508 any of the parties to the proceeding necessary to make a binding determination therein.

509 ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION

510 Nothing in this compact shall be construed to:

511 (a) affect the power of any state or subdivision thereof to fix rates of taxation, except
512 that a party state shall be obligated to implement Article III 2 of this compact;

513 (b) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any
514 tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII 9
515 may apply for the purposes of that article and the commission's powers of study and
516 recommendation pursuant to Article VI 3 may apply;

517 (c) withdraw or limit the jurisdiction of any state or local court or administrative officer
518 or body with respect to any person, corporation or other entity or subject matter, except to the
519 extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another
520 agency or body; or

521 (d) supersede or limit the jurisdiction of any court of the United States.

522 ARTICLE XII. CONSTRUCTION AND SEVERABILITY

523 This compact shall be liberally construed so as to effectuate the purposes thereof. The

524 provisions of this compact shall be severable and if any phrase, clause, sentence, or provision
 525 of this compact is declared to be contrary to the constitution of any state or of the United States
 526 or the applicability thereof to any government, agency, person, or circumstance is held invalid,
 527 the validity of the remainder of this compact and the applicability thereof to any government,
 528 agency, person, or circumstance shall not be affected thereby. If this compact shall be held
 529 contrary to the constitution of any state participating therein, the compact shall remain in full
 530 force and effect as to the remaining party states and in full force and effect as to the state
 531 affected as to all severable matters.

532 Section 2. Section **59-7-110** is amended to read:

533 **59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.**

534 (1) The amount of Utah net loss [~~which~~] that shall be carried back or forward to offset
 535 income of another taxable year [~~shall be~~] is determined as provided in this section.

536 (2) (a) [~~A~~] Subject to the other provisions of this section, a Utah net loss from a taxable
 537 year beginning before January 1, 1994, shall be carried back three taxable years preceding the
 538 taxable year of the loss and any remaining loss shall be carried forward five taxable years
 539 following the taxable year of the loss[~~, subject to the limitations of this section~~].

540 (b) [~~A~~] (i) Subject to the other provisions of this section, a Utah net loss from a
 541 taxable year beginning on or after January 1, 1994, may be carried back three taxable years
 542 preceding the taxable year of the loss and carried forward 15 taxable years following the
 543 taxable year of the loss[~~, subject to the limitations of this section~~].

544 (ii) If an election is made to forego the federal net operating loss carryback, [~~the~~] a
 545 Utah net loss is not eligible to be carried back unless an election is made for state purposes.

546 (3) [~~The~~] A Utah net loss shall be carried to the earliest eligible year for which the
 547 Utah taxable income before net loss deduction, minus Utah net losses from previous years
 548 [~~which~~] that were applied or required to be applied to offset income, is not less than zero.

549 (4) (a) Except as provided in Subsection (4)[~~(a)(iii)~~](b), the amount of Utah net loss
 550 [~~which~~] that shall be carried to the year identified in Subsection (3) [~~shall be~~] is the lesser of:

551 (i) the remaining Utah net loss after deduction of any amounts of [~~such~~] the Utah net
 552 loss [~~which~~] that were carried to previous years; or

553 (ii) the remaining Utah taxable income before net loss deduction of the year identified
 554 in Subsection (3) after deduction of Utah net losses from previous years [~~which~~] that were

555 carried or required to be carried to ~~[such]~~ the year~~[-and]~~ identified in Subsection (3).

556 ~~[(iii)]~~ (b) (i) ~~[in any event, the amount]~~ The amount of Utah net loss carried back from
 557 a taxable year ~~[beginning on or after January 1, 1994,]~~ may not exceed \$1,000,000 in Utah
 558 taxable income for each ~~[corporate]~~ return filed under this chapter in a taxable year~~[-any~~
 559 losses].

560 (ii) A Utah net loss in excess of \$1,000,000 may be carried forward~~[-and]~~.

561 ~~[(b) any]~~ (iii) A remaining Utah net loss shall be available to be carried to one or more
 562 taxable years in accordance with this section.

563 (5) (a) ~~[Corporations]~~ (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the
 564 assets or stock of another corporation may not deduct any net loss incurred by the acquired
 565 corporation prior to the date of acquisition. ~~[This subsection]~~

566 (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of
 567 the state of incorporation.

568 (b) An acquired corporation may deduct ~~[its]~~ the acquired corporation's net losses
 569 incurred before the date of acquisition against ~~[its]~~ the acquired corporation's separate income
 570 as calculated under ~~[Subsection (6)]~~ Subsections (6) and (7) if the acquired corporation has
 571 continued to carry on a trade or business substantially the same as that conducted before ~~[such]~~
 572 the acquisition.

573 (6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation
 574 that is acquired by a unitary group may deduct is calculated by:

575 (a) subject to Subsection (7)~~[-]~~;

576 (i) except as provided in Subsection (6)(a)(ii), calculating the sum of:

577 ~~[(i)]~~ (A) an amount determined by dividing the average value of the acquired
 578 corporation's real and tangible personal property owned or rented and used in this state during
 579 the taxable year by the average value of all of the unitary group's real and tangible personal
 580 property owned or rented and used during the taxable year;

581 ~~[(ii)]~~ (B) an amount determined by dividing the total amount paid in this state during
 582 the taxable year by the acquired corporation for compensation by the total compensation paid
 583 everywhere by the unitary group during the taxable year; and

584 ~~[(iii)]~~ (C) an amount determined by:

585 ~~[(A)]~~ (D) dividing the total sales of the acquired corporation in this state during the

586 taxable year by the total sales of the unitary group everywhere during the taxable year; and

587 ~~[(B)]~~ (II) (Aa) if the unitary group elects to ~~[apportion]~~ calculate the fraction for

588 apportioning business income to this state using the method described in Subsection

589 59-7-311(2)~~[(b)]~~(d), multiplying the amount calculated under Subsection

590 (6)(a)~~[(iii)(A)]~~(i)(C)(I) by two;

591 (Bb) if the unitary group is required to calculate the fraction for apportioning business

592 income to this state using the method described in Subsection 59-7-311(3)(a), multiplying the

593 amount calculated under Subsection (6)(a)(i)(C)(I) by four; or

594 (Cc) if the unitary group is required to calculate the fraction for apportioning business

595 income to this state using the method described in Subsection 59-7-311(3)(b), multiplying the

596 amount calculated under Subsection (6)(a)(i)(C)(I) by 10; or

597 (ii) if the unitary group is required to calculate the fraction for apportioning business

598 income to this state using the method described in Subsection 59-7-311(3)(c), calculating an

599 amount determined by dividing the total sales of the acquired corporation in this state during

600 the taxable year by the total sales of the unitary group everywhere during the taxable year;

601 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of

602 the fraction ~~[for]~~ the unitary group uses to apportion business income to this state ~~[using the~~

603 ~~same election for calculating that denominator that the unitary group uses]~~:

604 (i) for that taxable year; and

605 (ii) in accordance with Section 59-7-311;

606 (c) multiplying the amount calculated under Subsection (6)(b) by the business income

607 of the unitary group for the taxable year that is subject to apportionment under Section

608 59-7-311; and

609 (d) calculating the sum of:

610 (i) the amount calculated under Subsection (6)(c); and

611 (ii) the following amounts allocable to the acquired corporation for the taxable year:

612 (A) nonbusiness income allocable to this state; or

613 (B) nonbusiness loss allocable to this state.

614 (7) The amounts calculated under Subsection (6)(a) shall be derived in the same

615 manner as those amounts are derived for purposes of apportioning the unitary group's business

616 income before deducting the net loss, including a modification made in accordance with

617 Section 59-7-320.

618 Section 3. Section **59-7-302** is amended to read:

619 **59-7-302. Definitions -- Determination of when a taxpayer is considered to be a**
620 **sales factor weighted taxpayer.**

621 (1) As used in this part, unless the context otherwise requires:

622 ~~[(1)]~~ (a) "Aircraft type" means a particular model of aircraft as designated by the
623 manufacturer of the aircraft.

624 ~~[(2)]~~ (b) "Airline" is as defined in Section 59-2-102.

625 ~~[(3)]~~ (c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles
626 during the airline's tax period.

627 ~~[(4)]~~ (d) "Business income" means income arising from transactions and activity in the
628 regular course of the taxpayer's trade or business and includes income from tangible and
629 intangible property if the acquisition, management, and disposition of the property constitutes
630 integral parts of the taxpayer's regular trade or business operations.

631 ~~[(5)]~~ (e) "Commercial domicile" means the principal place from which the trade or
632 business of the taxpayer is directed or managed.

633 ~~[(6)]~~ (f) "Compensation" means wages, salaries, commissions, and any other form of
634 remuneration paid to employees for personal services.

635 ~~[(7)(a)]~~ (g) (i) Except as provided in Subsection ~~[(7)(b)]~~ (1)(g)(ii), "mobile flight
636 equipment" is as defined in Section 59-2-102.

637 ~~[(b)]~~ (ii) "Mobile flight equipment" does not include:

638 ~~[(i)]~~ (A) a spare engine; or

639 ~~[(ii)]~~ (B) tangible personal property described in Subsection 59-2-102(25) owned by
640 an:

641 ~~[(A)]~~ (I) air charter service; or

642 ~~[(B)]~~ (II) air contract service.

643 ~~[(8)]~~ (h) "Nonbusiness income" means all income other than business income.

644 ~~[(9)]~~ (i) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

645 ~~[(10)]~~ (j) "Sales" means all gross receipts of the taxpayer not allocated under Sections
646 59-7-306 through 59-7-310.

647 (k) Subject to Subsection (2), "sales factor weighted taxpayer" means:

- 648 (i) for a taxpayer that is not a unitary group, regardless of the number of economic
 649 activities the taxpayer performs, a taxpayer ~~§~~→ [that attributes] having ~~←~~§ greater than 50% of the
 649a taxpayer's
 650 total sales everywhere ~~§~~→ [to] generated by ~~←~~§ economic activities:
 651 (A) performed by the taxpayer; and
 652 (B) classified in a NAICS ~~§~~→ [sector] code ~~←~~§ of the 2002 or 2007 North American
 652a Industry
 653 Classification System of the federal Executive Office of the President, Office of Management
 654 and Budget, except for:
 655 (I) ~~§~~→ a NAICS code within ~~←~~§ NAICS Sector 21, Mining;
 656 (II) ~~§~~→ a NAICS code within ~~←~~§ NAICS Sector 31-33, Manufacturing; ~~§~~→ [or]
 656a (III) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;
 656b (IV) NAICS Code 515210, Cable and Other Subscription Programming;
 656c (V) NAICS Code 517510, Cable and Other Program Distribution; or
 657 ~~[(H)] (VI) a NAICS code within ~~←~~§ NAICS Sector 52, Finance and Insurance; or~~
 658 (ii) for a taxpayer that is a unitary group, a taxpayer ~~§~~→ [that attributes] having ~~←~~§ greater
 658a than 50% of
 659 the taxpayer's total sales everywhere ~~§~~→ [to] generated by ~~←~~§ economic activities:
 660 (A) performed by the unitary group; and
 661 (B) classified in a NAICS ~~§~~→ [sector] code ~~←~~§ of the 2002 or 2007 North American
 661a Industry
 662 Classification System of the federal Executive Office of the President, Office of Management
 663 and Budget, except for:
 664 (I) ~~§~~→ a NAICS code within ~~←~~§ NAICS Sector 21, Mining;
 665 (II) ~~§~~→ a NAICS code within ~~←~~§ NAICS Sector 31-33, Manufacturing; ~~§~~→ [or]
 665a (III) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;
 665b (IV) NAICS Code 515210, Cable and Other Subscription Programming;
 665c (V) NAICS Code 517510, Cable and Other Program Distribution; or
 666 ~~[(H)] (VI) a NAICS code within ~~←~~§ NAICS Sector 52, Finance and Insurance.~~
 667 ~~[(H)] (1) "State" means any state of the United States, the District of Columbia, the~~
 668 Commonwealth of Puerto Rico, any territory or possession of the United States, and any
 669 foreign country or political subdivision thereof.
 670 ~~[(12)] (m) "Transportation revenue" means revenue an airline earns from:~~
 671 (a) transporting a passenger or cargo; or

672 (b) from miscellaneous sales of merchandise as part of providing transportation
673 services.

674 [~~(13)~~] (n) "Utah revenue ton miles" means, for an airline, the total revenue ton miles
675 within the borders of this state:

676 (a) during the airline's tax period; and

677 (b) from flight stages that originate or terminate in this state.

678 (2) The following apply to Subsection (1)(k):

679 (a) (i) Subject to the other provisions of this Subsection (2), a taxpayer shall for each
680 taxable year determine whether the taxpayer is a sales factor weighted taxpayer.

681 (ii) A taxpayer shall make the determination required by Subsection (2)(a)(i) before the
682 due date for filing the taxpayer's return under this chapter for the taxable year, including
683 extensions.

684 (iii) For purposes of making the determination required by Subsection (2)(a)(i), total
685 sales everywhere include only the total sales everywhere:

686 (A) as determined in accordance with this part; and

687 (B) made during the taxable year for which a taxpayer makes the determination
688 required by Subsection (2)(a)(i).

689 (b) A taxpayer that files a return as a unitary group for a taxable year is considered to
690 be a unitary group for that taxable year.

691 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
692 commission may define the term "economic activity" consistent with the use of the term
693 "activity" in the 2007 North American Industry Classification System of the federal Executive
694 Office of the President, Office of Management and Budget.

695 Section 4. Section **59-7-311** is amended to read:

696 **59-7-311. Method of apportionment of business income.**

697 (1) [AH] For a taxable year, all business income shall be apportioned to this state by
698 multiplying the business income by a fraction calculated as provided in [Subsection (2)] this
699 section.

700 [~~(2) The fraction described in Subsection (1) is calculated as follows:]~~

701 [~~(a) for a taxpayer that does not make an election authorized by Subsection (3):]~~

702 (2) (a) Subject to the other provisions of this part, for the taxable year that begins on or
703 after January 1, 2010, but begins on or before December 31, 2010, a taxpayer, including a sales
704 factor weighted taxpayer, shall elect to calculate the fraction for apportioning business income
705 to this state under this section using:

706 (i) the method described in Subsection (2)(c); or

707 (ii) the method described in Subsection (2)(d).

708 (b) Subject to the other provisions of this part, for a taxable year that begins on or after
709 January 1, 2011, a taxpayer, except for a sales factor weighted taxpayer, shall elect to calculate

710 the fraction for apportioning business income to this state under this section using:

711 (i) the method described in Subsection (2)(c); or

712 (ii) the method described in Subsection (2)(d).

713 (c) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a)

714 or (b) may elect to calculate the fraction for apportioning business income as follows:

715 (i) the numerator of the fraction is the sum of:

716 (A) the property factor as calculated under Section 59-7-312;

717 (B) the payroll factor as calculated under Section 59-7-315; and

718 (C) the sales factor as calculated under Section 59-7-317; and

719 (ii) the denominator of the fraction is three~~[-and]~~.

720 ~~[(b) for a taxpayer that makes an election authorized by Subsection (3):]~~

721 (d) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a)

722 or (b) may elect to calculate the fraction for apportioning business income as follows:

723 (i) the numerator of the fraction is the sum of:

724 (A) the property factor as calculated under Section 59-7-312;

725 (B) the payroll factor as calculated under Section 59-7-315; and

726 (C) the product of:

727 (I) the sales factor as calculated under Section 59-7-317; and

728 (II) two; and

729 (ii) the denominator of the fraction is four.

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

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

735 ~~[(c)]~~ (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
 736 Act, the commission may make rules providing procedures for a taxpayer described in
 737 Subsection (2)(a) or (b) to make the election [described in Subsection (3)(a)] required by this
 738 Subsection (2).

739 (3) (a) Subject to the other provisions of this part, for the taxable year that begins on or
 740 after January 1, 2011, but begins on or before December 31, 2011, a sales factor weighted

741 taxpayer shall calculate the fraction for apportioning business income to this state as follows:

742 (i) the numerator of the fraction is the sum of:

743 (A) the property factor as calculated under Section 59-7-312;

744 (B) the payroll factor as calculated under Section 59-7-315; and

745 (C) the product of:

746 (I) the sales factor as calculated under Section 59-7-317; and

747 (II) four; and

748 (ii) the denominator of the fraction is six.

749 (b) Subject to the other provisions of this part, for the taxable year that begins on or
750 after January 1, 2012, but begins on or before December 31, 2012, a sales factor weighted

751 taxpayer shall calculate the fraction for apportioning business income to this state as follows:

752 (i) the numerator of the fraction is the sum of:

753 (A) the property factor as calculated under Section 59-7-312;

754 (B) the payroll factor as calculated under Section 59-7-315; and

755 (C) the product of:

756 (I) the sales factor as calculated under Section 59-7-317; and

757 (II) 10; and

758 (ii) the denominator of the fraction is 12.

759 (c) Subject to the other provisions of this part, for a taxable year that begins on or after
760 January 1, 2013, a sales factor weighted taxpayer shall calculate the fraction for apportioning

761 business income to this state as follows:

762 (i) the numerator of the fraction is the sales factor as calculated under Section
763 59-7-317; and

764 (ii) the denominator of the fraction is one.

765 (4) If a taxpayer calculates the fraction for apportioning business income to this state
766 using a method described in this section:

767 (a) the taxpayer shall determine the method for calculating the fraction for apportioning
768 business income to this state under this section on or before the due date for filing the

769 taxpayer's return under this chapter for the taxable year, including extensions; and

770 (b) the method described in Subsection (4)(a) is in effect for the time period:

771 (i) beginning on the first day of the taxpayer's taxable year for which the taxpayer

772 makes the determination described in Subsection (4)(a); and

773 (ii) ends on the last day of the taxable year described in Subsection (4)(b)(i).

773a **§→ Section 5. Section 59-7-319 is amended to read:**

773b **59-7-319. Receipt, rent, royalty, or sale in connection with other than tangible personal**
773c **property -- When considered to be in this state.**

773d **(1) As used in this section:**

773e **(a) "Facilities-based communications operator" means a taxpayer that:**

773f **(i) is a unitary group;**

773g **(ii) operates in more than one state;**

773h **(iii) owns and operates more than \$100,000,000 of property everywhere as determined**
773i **in accordance with this part in or over a public right of way; and**

773j **(iv) has greater than 50% of the taxpayer's total sales everywhere as determined in**
773k **accordance with this part generated by economic activities:**

773l **(A) performed by the taxpayer; and**

773m **(B) classified in at least one of the following NAICS codes of the 2002 or 2007 North**
773n **American Industry Classification System of the federal Executive Office of the President,**
773o **Office of Management and Budget:**

773p **(I) NAICS Code 515210, Cable and Other Subscription Programming; or**

773q **(II) NAICS Code 517510, Cable and Other Program Distribution.**

773r **[—(1)(a)] (b) (i) Subject to Subsection (1)(b) (ii), [~~as used in this section,~~] "regulated**
773s **investment company" is as defined in Section 851(a), Internal Revenue Code, in effect for the**
773t **taxable year.**

773u **[~~(b)~~] (ii) "Regulated investment company" includes a trustee or sponsor of an**
773v **employee benefit plan that has an account in a regulated investment company.**

773w **(2) The following are considered to be in this state:**

773x **(a) a rent in connection with real property if the real property is in this state;**

773y **(b) a royalty in connection with real property if the real property is in this state;**

773z **(c) a sale in connection with real property if the real property is in this state; or**

773aa **(d) other income in connection with real property if the real property is in this state.**

773ab **(3) (a) Subject to Subsection (3)(b), a receipt from the performance of a service is**
773ac **considered to be in this state if the purchaser of the service receives a greater benefit of the**
773ad **service in this state than in any other state.**

773ae **(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the**
773af **commission may by rule prescribe the circumstances under which a purchaser of a service**

773ag receives a greater benefit of the service in this state than in any other state.

773ah (4) (a) Subject to Subsection (4)(b), a receipt in connection with intangible property is
773ai considered to be in this state if the intangible property is used in this state.

773aj (b) If the intangible property described in Subsection (4)(a) is used in this state and
773ak outside this state, a receipt in connection with the intangible property shall be apportioned to
773al this state in accordance with Subsection (4)(c).

773am (c) For purposes of Subsection (4)(b), for a taxable year the percentage of a receipt in
773an connection with intangible property that is considered to be in this state is the percentage of
773ao the use of the intangible property that occurs in this state during the taxable year.

773ap (5) (a) Notwithstanding Subsections (2) through (4), for purposes of a facilities-based
773aq communications operator only, sales, other than sales of tangible personal property, are in this
773ar state if the income-producing activity is performed both in and outside this state and a greater
773as proportion of the income-producing activity is performed in this state than in any other state,
773at based on costs of performance.

773au (b) For purposes of this Subsection (5) only, a sale of a product delivered electronically
773av is not considered to be a sale of tangible personal property.

773aw [~~(5)~~] (6) (a) Notwithstanding Subsections (2) through [~~(4)~~] (5), a sale, other than a sale of
773ax tangible personal property, derived, directly or indirectly, from the sale of management,
773ay distribution, or administration services to, or on behalf of a regulated investment company, is
773az considered to be in this state:

773ba (i) to the extent that shareholders of the regulated investment company are domiciled
773bb in the state; and

773bc (ii) as provided in this Subsection [~~(5)~~] (6) .

773bd (b) For purposes of Subsection [~~(5)~~] (6) (a), the amount of a sale, other than a sale of
773be tangible personal property, that is considered to be in this state is calculated by determining
773bf the product of:

773bg (i) the taxpayer's total dollar amount of sales of the services; and

773bh (ii) a fraction, the numerator of which is the average of the sum of the beginning of the
773bi year and the end of year balance of shares owned by the investment company shareholders
773bj domiciled in this state and the denominator of which is the average of the sum of the beginning
773bk of the year and end of year balance of shares owned by the investment company shareholders.

773bl (c) A separate computation shall be made to determine the sales for each investment
773bm company.

773bn [~~(6)~~] (7) (a) Notwithstanding Subsections (2) through [~~(4)~~] (5) and subject to

773bo Subsection ~~(6)~~ (7) (b), the following sales are considered to be in this state to the extent that
 773bp customers of a securities brokerage business are domiciled in the state:

773bq (i) a sale, other than a sale of tangible personal property, derived, directly or indirectly,
 773br from the sale of a securities brokerage service by a taxpayer if that taxpayer is primarily
 773bs engaged in providing a service in this state to a regulated investment company; or

773bt (ii) a sale, other than a sale of tangible personal property, derived, directly or indirectly,
 773bu from the sale of a securities brokerage service by a taxpayer that is an affiliate of a taxpayer
 773bv that provides a service in this state to a regulated investment company.

773bw (b) For purposes of Subsection ~~(6)~~ (7) (a), the amount of a sale, other than a sale of
 773bx tangible personal property, that is considered to be in this state is calculated by determining
 773by the product of:

773bz (i) the taxpayer's total dollar amount of sales of securities brokerage services; and

773ca (ii) a fraction, the numerator of which is the receipts from securities brokerage
 773cb services from customers of the taxpayer domiciled in this state, and the denominator of which
 773cc is the receipts from securities brokerage services from all customers of the taxpayer.

773cd ~~(7)~~ (8) Whether sales by an airline, other than sales of tangible personal property,
 773ce are in this state is determined as provided in this section, subject to the calculation required by
 773cf Subsection 59-7-317(2). ←§

774 Section §→ [5] 6 ←§ . Retrospective operation.

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

776 2010.

Legislative Review Note
 as of 2-25-10 11:41 AM

Office of Legislative Research and General Counsel

Fiscal Note**S.B. 165 - Allocation and Apportionment of Income and Deduction of a Net
Loss - As Amended**
2010 General Session
State of Utah

State Impact

Enactment of this bill increases revenue to the Education Fund by \$73,100 in FY 2011 and \$91,400 in FY 2012.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
Education Fund	\$0	\$0	\$0	\$0	\$73,100	\$91,400
Total	\$0	\$0	\$0	\$0	\$73,100	\$91,400

Individual, Business and/or Local Impact

This bill shifts \$7,700,000 of corporate income tax liability between industries and \$47,200,000 between corporate income tax payers. Individuals and local governments are unaffected.