

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

3 2010 GENERAL SESSION

4 STATE OF UTAH

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

6 House Sponsor: John Dougall

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

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

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill has retrospective operation for a taxable year beginning on or after January 1,
27 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



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

53 ARTICLE II. DEFINITIONS

54 As used in this compact:

- 55 1. "State" means a state of the United States, the District of Columbia, the
- 56 Commonwealth of Puerto Rico, or any territory or possession of the United States.
- 57 2. "Subdivision" means any governmental unit or special district of a state.

58 3. "Taxpayer" means any corporation, partnership, firm, association, governmental
59 unit or agency, or person acting as a business entity in more than one state.

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

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

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

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

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

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

86 to Article IV.

87 **ARTICLE III. ELEMENTS OF INCOME TAX LAWS**

88 **Taxpayer Option, State**

89 **and Local Taxes**

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

104 **Taxpayer Option, Short Form**

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

114 upon the adoption by the commission, shall replace the \$100,000 figure specifically provided
115 herein. Each party state and subdivision thereof may make the same election available to
116 taxpayers additional to those specified in this paragraph.

117 Coverage

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

120 ARTICLE IV. DIVISION OF INCOME

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

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

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

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

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

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

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

141 (g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of

142 this article.

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

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

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

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

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

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

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

165 (c) The extent of utilization of tangible personal property in a state is determined by
166 multiplying the rents and royalties by a fraction, the numerator of which is the number of days
167 of physical location of the property in the state during the rental or royalty period in the
168 taxable year and the denominator of which is the number of days of physical location of the
169 property everywhere during all rental or royalty periods in the taxable year. If the physical

170 location of the property during the rental or royalty period is unknown or unascertainable by
171 the taxpayer, tangible personal property is utilized in the state in which the property was
172 located at the time the rental or royalty payer obtained possession.

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

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

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

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

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

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

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

196 9. All business income shall be apportioned to this state by multiplying the income by
197 a fraction~~[- the numerator of which is the property factor plus the payroll factor plus the sales~~

198 ~~factor and the denominator of which is three]~~ determined in accordance with Section
199 59-7-311.

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

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

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

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

215 14. Compensation is paid in this state if:

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

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

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

224 15. The sales factor is a fraction, the numerator of which is the total sales of the
225 taxpayer in this state during the tax period and the denominator of which is the total sales of

226 the taxpayer everywhere during the tax period.

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

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

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

233 17. Sales, other than sales of tangible personal property, are in this state if:

234 (a) the income-producing activity is performed in this state; or

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

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

242 (a) separate accounting;

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

244 (c) the inclusion of one or more additional factors which will fairly represent the
245 taxpayer's business activity in this state; or

246 (d) the employment of any other method to effectuate an equitable allocation and
247 apportionment of the taxpayer's income.

248 **ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS**

249 **Tax Credit**

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

254 of the credit shall then be applied against the amount of any use tax due a subdivision.

255 Exemption Certificates, Vendors May Rely

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

260 ARTICLE VI. THE COMMISSION

261 Organization and Management

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

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

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

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

279 (e) The commission shall hold an annual meeting and such other regular meetings as
280 its bylaws may provide and such special meetings as its executive committee may determine.
281 The commission bylaws shall specify the dates of the annual and any other regular meetings,

282 and shall provide for the giving of notice of annual, regular, and special meetings. Notices of
283 special meetings shall include the reasons therefor and an agenda of the items to be
284 considered.

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

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

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

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

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

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

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

310 Committees

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

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

320 (c) The commission may establish such additional committees as its bylaws may
321 provide.

322 Powers

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

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

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

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

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

333 Finance

334 4. (a) The commission shall submit to the governor or designated officer or officers of
335 each party state a budget of its estimated expenditures for such period as may be required by
336 the laws of that state for presentation to the legislature thereof.

337 (b) Each of the commission's budgets of estimated expenditures shall contain specific

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

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

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

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

364 (f) Nothing contained in this article shall be construed to prevent commission
365 compliance with laws relating to audit or inspection of accounts by or on behalf of any

366 government contributing to the support of the commission.

367 **ARTICLE VII. UNIFORM REGULATIONS AND FORMS**

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

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

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

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

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

385 **ARTICLE VIII. INTERSTATE AUDITS**

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

388 2. Any party state or subdivision thereof desiring to make or participate in an audit of
389 any accounts, books, papers, records, or other documents may request the commission to
390 perform the audit on its behalf. In responding to the request, the commission shall have access
391 to and may examine, at any reasonable time, such accounts, books, papers, records, and other
392 documents and any relevant property or stock of merchandise. The commission may enter
393 into agreements with party states or their subdivisions for assistance in performance of the

394 audit. The commission shall make charges, to be paid by the state or local government or
395 governments for which it performs the service, for any audits performed by it in order to
396 reimburse itself for the actual costs incurred in making the audit.

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

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

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

420 6. Information obtained by any audit pursuant to this article shall be confidential and
421 available only for tax purposes to party states, their subdivisions or the United States.

422 Availability of information shall be in accordance with the laws of the states or subdivisions
423 on whose account the commission performs the audit, and only through the appropriate
424 agencies or officers of such states or subdivisions. Nothing in this article shall be construed to
425 require any taxpayer to keep records for any period not otherwise required by law.

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

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

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

432 **ARTICLE IX. ARBITRATION**

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

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

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

448 4. The arbitration board shall be composed of one person selected by the taxpayer, one
449 by the agency or agencies involved, and one member of the commission's arbitration panel. If

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

459 5. The board may sit in any state or subdivision party to the proceeding, in the state of
460 the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does
461 business, or in any place that it finds most appropriate for gaining access to evidence relevant
462 to the matter before it.

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

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

475 8. Unless the parties otherwise agree the expenses and other costs of the arbitration
476 shall be assessed and allocated among the parties by the board in such manner as it may
477 determine. The commission shall fix a schedule of compensation for members of arbitration

478 boards and of other allowable expenses and costs. No officer or employee of a state or local
479 government who serves as a member of a board shall be entitled to compensation therefor
480 unless he is required on account of his service to forego the regular compensation attaching to
481 his public employment, but any such board members shall be entitled to expenses.

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

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

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

491 12. The commission shall adopt and publish rules of procedure and practice and shall
492 file a copy of such rules and of any amendment thereto with the appropriate agency or officer
493 in each of the party states.

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

496 **ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL**

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

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

504 3. No proceeding commenced before an arbitration board prior to the withdrawal of a
505 state and to which the withdrawing state or any subdivision thereof is a party shall be

506 discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction
507 over any of the parties to the proceeding necessary to make a binding determination therein.

508 **ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION**

509 Nothing in this compact shall be construed to:

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

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

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

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

521 **ARTICLE XII. CONSTRUCTION AND SEVERABILITY**

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

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

532 **59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.**

533 (1) The amount of Utah net loss [which] that shall be carried back or forward to offset

534 income of another taxable year [~~shall be~~] is determined as provided in this section.

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

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

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

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

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

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

552 (ii) the remaining Utah taxable income before net loss deduction of the year identified
553 in Subsection (3) after deduction of Utah net losses from previous years [~~which~~] that were
554 carried or required to be carried to [~~such~~] the year [~~, and~~] identified in Subsection (3).

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

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

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

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

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

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

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

574 (a) subject to Subsection (7)[~~;~~];

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

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

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

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

584 [~~(A)~~] (I) dividing the total sales of the acquired corporation in this state during the
585 taxable year by the total sales of the unitary group everywhere during the taxable year; and

586 [~~(B)~~] (II) (Aa) if the unitary group elects to [~~apportion~~] calculate the fraction for
587 apportioning business income to this state using the method described in Subsection

588 59-7-311(2)[~~(b)~~](d), multiplying the amount calculated under Subsection

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

590 (Bb) if the unitary group is required to calculate the fraction for apportioning business
591 income to this state using the method described in Subsection 59-7-311(3)(a), multiplying the
592 amount calculated under Subsection (6)(a)(i)(C)(I) by four; or

593 (Cc) if the unitary group is required to calculate the fraction for apportioning business
594 income to this state using the method described in Subsection 59-7-311(3)(b), multiplying the
595 amount calculated under Subsection (6)(a)(i)(C)(I) by 10; or

596 (ii) if the unitary group is required to calculate the fraction for apportioning business
597 income to this state using the method described in Subsection 59-7-311(3)(c), calculating an
598 amount determined by dividing the total sales of the acquired corporation in this state during
599 the taxable year by the total sales of the unitary group everywhere during the taxable year;

600 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator
601 of the fraction [~~for~~] the unitary group uses to apportion business income to this state [~~using the~~
602 ~~same election for calculating that denominator that the unitary group uses~~]:

603 (i) for that taxable year; and

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

605 (c) multiplying the amount calculated under Subsection (6)(b) by the business income
606 of the unitary group for the taxable year that is subject to apportionment under Section
607 59-7-311; and

608 (d) calculating the sum of:

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

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

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

612 (B) nonbusiness loss allocable to this state.

613 (7) The amounts calculated under Subsection (6)(a) shall be derived in the same
614 manner as those amounts are derived for purposes of apportioning the unitary group's business
615 income before deducting the net loss, including a modification made in accordance with
616 Section 59-7-320.

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

618 **59-7-302. Definitions -- Determination of when a taxpayer is considered to be a**
619 **sales factor weighted taxpayer.**

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

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

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

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

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

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

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

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

636 ~~(b)~~ (ii) "Mobile flight equipment" does not include:

637 ~~(i)~~ (A) a spare engine; or

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

640 ~~(A)~~ (I) air charter service; or

641 ~~(B)~~ (II) air contract service.

642 ~~(8)~~ (h) "Nonbusiness income" means all income other than business income.

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

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

646 (k) Subject to Subsection (2), "sales factor weighted taxpayer" means:
647 (i) for a taxpayer that is not a unitary group, regardless of the number of economic
648 activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total
649 sales everywhere generated by economic activities:
650 (A) performed by the taxpayer; and
651 (B) classified in a NAICS code of the 2002 or 2007 North American Industry
652 Classification System of the federal Executive Office of the President, Office of Management
653 and Budget, except for:
654 (I) a NAICS code within NAICS Sector 21, Mining;
655 (II) a NAICS code within NAICS Sector 31-33, Manufacturing;
656 (III) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;
657 (IV) a NAICS code within NAICS Sector 51, Information, except for NAICS
658 Subsector 519, Other Information Services; or
659 (V) a NAICS code within NAICS Sector 52, Finance and Insurance; or
660 (ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the
661 taxpayer's total sales everywhere generated by economic activities:
662 (A) performed by the unitary group; and
663 (B) classified in a NAICS code of the 2002 or 2007 North American Industry
664 Classification System of the federal Executive Office of the President, Office of Management
665 and Budget, except for:
666 (I) a NAICS code within NAICS Sector 21, Mining;
667 (II) a NAICS code within NAICS Sector 31-33, Manufacturing;
668 (III) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;
669 (IV) a NAICS code within NAICS Sector 51, Information, except for NAICS
670 Subsector 519, Other Information Services; or
671 (V) a NAICS code within NAICS Sector 52, Finance and Insurance.
672 [(H)] (l) "State" means any state of the United States, the District of Columbia, the
673 Commonwealth of Puerto Rico, any territory or possession of the United States, and any

674 foreign country or political subdivision thereof.

675 ~~[(12)]~~ (m) "Transportation revenue" means revenue an airline earns from:

676 ~~[(a)]~~ (i) transporting a passenger or cargo; or

677 ~~[(b)]~~ (ii) from miscellaneous sales of merchandise as part of providing transportation
678 services.

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

681 ~~[(a)]~~ (i) during the airline's tax period; and

682 ~~[(b)]~~ (ii) from flight stages that originate or terminate in this state.

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

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

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

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

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

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

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

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

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

701 **59-7-311. Method of apportionment of business income.**

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

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

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

707 (2) (a) Subject to the other provisions of this part, for the taxable year that begins on
708 or after January 1, 2010, but begins on or before December 31, 2010, a taxpayer, including a
709 sales factor weighted taxpayer, shall elect to calculate the fraction for apportioning business
710 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 (b) Subject to the other provisions of this part, for a taxable year that begins on or after
714 January 1, 2011, a taxpayer, except for a sales factor weighted taxpayer, shall elect to calculate
715 the fraction for apportioning business income to this state under this section using:

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

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

718 (c) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a)
719 or (b) may elect to calculate the fraction for apportioning business income as follows:

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

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

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

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

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

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

726 (d) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a)
727 or (b) may elect to calculate the fraction for apportioning business income as follows:

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

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

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

731 (C) the product of:

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

733 (II) two; and

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

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

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

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

744 (3) (a) Subject to the other provisions of this part, for the taxable year that begins on
745 or after January 1, 2011, but begins on or before December 31, 2011, a sales factor weighted
746 taxpayer shall calculate the fraction for apportioning business income to this state as follows:

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

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

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

750 (C) the product of:

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

752 (II) four; and

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

754 (b) Subject to the other provisions of this part, for the taxable year that begins on or
755 after January 1, 2012, but begins on or before December 31, 2012, a sales factor weighted
756 taxpayer shall calculate the fraction for apportioning business income to this state as follows:

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

758 (A) the property factor as calculated under Section 59-7-312;
759 (B) the payroll factor as calculated under Section 59-7-315; and
760 (C) the product of:
761 (I) the sales factor as calculated under Section 59-7-317; and
762 (II) 10; and
763 (ii) the denominator of the fraction is 12.
764 (c) Subject to the other provisions of this part, for a taxable year that begins on or after
765 January 1, 2013, a sales factor weighted taxpayer shall calculate the fraction for apportioning
766 business income to this state as follows:
767 (i) the numerator of the fraction is the sales factor as calculated under Section
768 59-7-317; and
769 (ii) the denominator of the fraction is one.
770 (4) If a taxpayer calculates the fraction for apportioning business income to this state
771 using a method described in this section:
772 (a) the taxpayer shall determine the method for calculating the fraction for
773 apportioning business income to this state under this section on or before the due date for
774 filing the taxpayer's return under this chapter for the taxable year, including extensions; and
775 (b) the method described in Subsection (4)(a) is in effect for the time period:
776 (i) beginning on the first day of the taxpayer's taxable year for which the taxpayer
777 makes the determination described in Subsection (4)(a); and
778 (ii) ends on the last day of the taxable year described in Subsection (4)(b)(i).
779 **Section 5. Retrospective operation.**
780 This bill has retrospective operation for a taxable year beginning on or after January 1,
781 2010.