

S.B. 165

ALLOCATION AND APPORTIONMENT OF INCOME AND DEDUCTION OF A NET LOSS

Senator **Wayne L. Niederhauser** proposes the following amendments:

1. *Page 2, Line 33:*

33 59-7-311, as last amended by Laws of Utah 2008, Chapter 382
= **59-7-319, as last amended by Laws of Utah 2008, Chapters 105 and 283**

2. *Page 21, Line 647 through Page 22, Line 666:*

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
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 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}~~
= (III) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;
(IV) NAICS Code 515210, Cable and Other Subscription Programming;
(V) NAICS Code 517510, Cable and Other Program Distribution; or
657 ~~{(III)}~~ (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 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 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}~~
= (III) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;
(IV) NAICS Code 515210, Cable and Other Subscription Programming;

(V) NAICS Code 517510, Cable and Other Program Distribution; or

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~~{(H)}~~ **(VI) a NAICS code within** NAICS Sector 52, Finance and Insurance.

3. Page 26, Line 773:

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

Section 5. Section 59-7-319 is amended to read:

59-7-319. Receipt, rent, royalty, or sale in connection with other than tangible personal property --

When considered to be in this state.

(1) As used in this section:

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

(i) is a unitary group;

(ii) operates in more than one state;

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

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

(A) performed by the taxpayer; and

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

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

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

~~{(1)(a)}~~ **(b) (i)** Subject to Subsection (1)(b) **(ii)**, ~~{as used in this section,}~~ "regulated investment company" is as defined in Section 851(a), Internal Revenue Code, in effect for the taxable year.

~~{(b)}~~ **(ii)** "Regulated investment company" includes a trustee or sponsor of an employee benefit plan that has an account in a regulated investment company.

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

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

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

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

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

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

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule prescribe the circumstances under which a purchaser of a service receives a greater benefit of the service in this state than in any other state.

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

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

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

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

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

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

- (i) to the extent that shareholders of the regulated investment company are domiciled in the state; and
- (ii) as provided in this Subsection ~~(5)~~ **(6)**.

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

- (i) the taxpayer's total dollar amount of sales of the services; and
- (ii) a fraction, the numerator of which is the average of the sum of the beginning of the year and the end of year balance of shares owned by the investment company shareholders domiciled in this state and the denominator of which is the average of the sum of the beginning of the year and end of year balance of shares owned by the investment company shareholders.

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

~~(6)~~ **(7)** (a) Notwithstanding Subsections (2) through ~~(4)~~ **(5)** and subject to Subsection ~~(6)~~ **(7)** (b), the following sales are considered to be in this state to the extent that customers of a securities brokerage business are domiciled in the state:

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

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

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

- (i) the taxpayer's total dollar amount of sales of securities brokerage services; and
- (ii) a fraction, the numerator of which is the receipts from securities brokerage services from customers

of the taxpayer domiciled in this state, and the denominator of which is the receipts from securities brokerage services from all customers of the taxpayer.

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

Renumber remaining sections accordingly.