

1 **DETERMINATION OF STATE TAXABLE INCOME**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Evan J. Vickers**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **Committee Note:**

9 The Revenue and Taxation Interim Committee recommended this bill.

10 **General Description:**

11 This bill amends the Individual Income Tax Act to address the determination of state
12 taxable income.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ addresses the determination of state taxable income derived from Utah sources; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill has retrospective operation for a taxable year beginning on or after January 1,
21 2011.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **59-10-117**, as last amended by Laws of Utah 2009, Chapter 312

25 **59-10-536**, as last amended by Laws of Utah 2009, Chapter 212

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



28 Section 1. Section **59-10-117** is amended to read:

29 **59-10-117. State taxable income derived from Utah sources.**

30 (1) For purposes of Section 59-10-116, state taxable income derived from Utah sources
31 includes those items includable in state taxable income attributable to or resulting from:

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

35 (b) the carrying on of a business, trade, profession, or occupation in this state[-];

36 (c) an addition to adjusted gross income required by Subsection 59-10-114(1)(c), (d),
37 or (h) to the extent the addition was previously subtracted from state taxable income;

38 (d) a subtraction from adjusted gross income required by Subsection 59-10-114(2)(c)
39 for a refund described in Subsection 59-10-114(2)(c) to the extent the refund subtracted is
40 related to a tax imposed by this state; or

41 (e) an adjustment to adjusted gross income required by Section 59-10-115 to the extent
42 the adjustment is related to an item described in Subsections (1)(a) through (d).

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

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

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

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

55 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and
56 deduction derived from or connected with Utah sources shall be determined under Section
57 59-10-118;

58 (e) a nonresident, other than a dealer holding property primarily for sale to customers

59 in the ordinary course of the dealer's trade or business, may not be considered to carry on a
60 trade, business, profession, or occupation in this state solely by reason of the purchase or sale
61 of property for the nonresident's own account;

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

65 (g) a nonresident partner's distributive share of partnership income, gain, loss,
66 deduction, or credit derived from or connected with Utah sources shall be determined under
67 Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act;

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

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

78 Section 2. Section **59-10-536** is amended to read:

79 **59-10-536. Assessment and collection of tax -- Change on federal income tax**
80 **return -- Taxpayer requirement to make certain filings with the commission.**

81 (1) (a) If, before the expiration of the time prescribed in this section for the assessment
82 of a tax, the commission and the taxpayer agree in writing to the assessment of the tax in a time
83 period after the time period prescribed in this section for the assessment of a tax, the tax may
84 be assessed at any time before the expiration of the period to which the commission and the
85 taxpayer agree.

86 (b) A time period that the commission and a taxpayer agree upon under Subsection
87 (1)(a) may be extended by written agreement:

88 (i) between the commission and the taxpayer; and

89 (ii) made before the expiration of the time period that the commission and the taxpayer

90 previously agreed upon.

91 (2) (a) (i) Except as provided in Subsection (2)(a)(iii), if a change is made in a
92 taxpayer's net income on the taxpayer's federal income tax return because of an action by the
93 federal government, the taxpayer shall file with the commission within 90 days after the date
94 there is a final determination of the action:

95 (A) a copy of the taxpayer's amended federal income tax return; and

96 (B) an amended state income tax return that conforms with the changes made in the
97 taxpayer's amended federal income tax return.

98 (ii) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net
99 income on the taxpayer's federal income tax return because the taxpayer files an amended
100 federal income tax return, the taxpayer shall file with the commission within 90 days after the
101 date the taxpayer files the amended federal income tax return:

102 (A) a copy of the taxpayer's amended federal income tax return; and

103 (B) an amended state income tax return that conforms with the changes made in the
104 taxpayer's amended federal income tax return.

105 (iii) A taxpayer is not required to file a return described in Subsection (2)(a)(i) or (ii) if
106 a change in the taxpayer's federal income tax return does not increase state tax liability.

107 (b) (i) Subject to Subsection (2)(b)(iii), the commission may assess a deficiency in state
108 income taxes within three years after a notification or amended federal income tax return
109 described in Subsection (2)(a) is filed.

110 (ii) The amount of an assessment of tax under this Subsection (2)(b) may not exceed
111 the amount of the increase in Utah tax attributable to the change described in Subsection (2)(a).

112 (iii) If a taxpayer fails to report to the commission a change specified in this Subsection
113 (2)(b), the assessment may be made at any time within six years after the date of the change.

114 (3) If a deficiency in federal income tax required to be reported is attributable to a net
115 operating loss carry back or carry forward, a deficiency in the tax imposed by this chapter may
116 be assessed within three years from the due date of the return for the taxable year of the net
117 operating loss.

118 (4) Except as provided in Subsections (1) through (3), this section does not affect the
119 time within which or the amount for which an assessment may otherwise be made.

120 (5) (a) An erroneous refund shall be considered an underpayment of tax on the date the

121 commission makes the erroneous refund.

122 (b) An assessment of a deficiency arising out of an erroneous refund may be made at
123 any time within three years from the date the refund is made, except that an assessment may be
124 made within five years from the time the refund is made if any part of the refund is induced by
125 fraud or misrepresentation of a material fact.

126 (6) (a) Subject to Subsection (6)(b), if a return is required for a decedent or for the
127 decedent's estate during the period of administration, the tax shall be assessed within 18
128 months after written request for the assessment:

129 (i) made after the return is filed; and

130 (ii) by:

131 (A) the personal representative; or

132 (B) another person representing the estate of the decedent.

133 (b) Except as otherwise provided in this section, the assessment described in
134 Subsection (6)(a) may not be made more than three years after the time the return is filed.

135 (7) (a) The amount of a tax imposed by this chapter may be assessed at any time within
136 six years after the time the return is filed if:

137 (i) a resident individual, resident estate, or resident trust omits from gross income as
138 reported for federal income tax purposes an amount properly includable in adjusted gross
139 income, which is in excess of 25% of the amount of gross income stated in the return; or

140 (ii) a nonresident individual, nonresident estate, or nonresident trust omits from gross
141 income as reported for federal income tax purposes an amount of adjusted gross income
142 derived from Utah sources [~~as defined by~~] determined in accordance with Section 59-10-117,
143 properly includable in adjusted gross income, [~~which~~] that is in excess of 25% of the amount of
144 adjusted gross income derived from Utah sources which is reflected in the return.

145 (b) For purposes of Subsection (7)(a)(ii), there may not be taken into account any
146 amount that is omitted in the return if the amount is disclosed:

147 (i) (A) in the return; or

148 (B) in a statement attached to the return; and

149 (ii) in a manner adequate to apprise the commission of the nature and amount of the
150 item.

151 Section 3. **Retrospective operation.**

152 This bill has retrospective operation for a taxable year beginning on or after January 1,
153 2011.

Legislative Review Note
as of 11-17-10 1:26 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 37, 2011 General Session

SHORT TITLE: **Determination of State Taxable Income**

SPONSOR: **Vickers, E.**

STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.