

**Representative John Knotwell** proposes the following substitute bill:

**CORPORATE FRANCHISE AND INCOME TAX CHANGES**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John Knotwell**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill addresses corporate franchise and income taxes.

**Highlighted Provisions:**

This bill:

- ▶ addresses the apportionment of business income to the state for purposes of corporate franchise and income taxes; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**59-7-110**, as last amended by Laws of Utah 2010, Chapter 155

**59-7-302**, as last amended by Laws of Utah 2014, Chapters 65 and 398

**59-7-311**, as last amended by Laws of Utah 2010, Chapter 155

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



26 Section 1. Section **59-7-110** is amended to read:

27 **59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.**

28 (1) The amount of Utah net loss that shall be carried back or forward to offset income  
29 of another taxable year is determined as provided in this section.

30 (2) (a) Subject to the other provisions of this section, a Utah net loss from a taxable  
31 year beginning before January 1, 1994, shall be carried back three taxable years preceding the  
32 taxable year of the loss and any remaining loss shall be carried forward five taxable years  
33 following the taxable year of the loss.

34 (b) (i) Subject to the other provisions of this section, a Utah net loss from a taxable  
35 year beginning on or after January 1, 1994, may be carried back three taxable years preceding  
36 the taxable year of the loss and carried forward 15 taxable years following the taxable year of  
37 the loss.

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

40 (3) A Utah net loss shall be carried to the earliest eligible year for which the Utah  
41 taxable income before net loss deduction, minus Utah net losses from previous years that were  
42 applied or required to be applied to offset income, is not less than zero.

43 (4) (a) Except as provided in Subsection (4)(b), the amount of Utah net loss that shall  
44 be carried to the year identified in Subsection (3) is the lesser of:

45 (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that  
46 were carried to previous years; or

47 (ii) the remaining Utah taxable income before net loss deduction of the year identified  
48 in Subsection (3) after deduction of Utah net losses from previous years that were carried or  
49 required to be carried to the year identified in Subsection (3).

50 (b) (i) The amount of Utah net loss carried back from a taxable year may not exceed  
51 \$1,000,000 in Utah taxable income for each return filed under this chapter in a taxable year.

52 (ii) A Utah net loss in excess of \$1,000,000 may be carried forward.

53 (iii) A remaining Utah net loss shall be available to be carried to one or more taxable  
54 years in accordance with this section.

55 (5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of  
56 another corporation may not deduct any net loss incurred by the acquired corporation prior to

57 the date of acquisition.

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

60 (b) An acquired corporation may deduct the acquired corporation's net losses incurred  
61 before the date of acquisition against the acquired corporation's separate income as calculated  
62 under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or  
63 business substantially the same as that conducted before the acquisition.

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

66 (a) subject to Subsection (7):

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

68 (A) an amount determined by dividing the average value of the acquired corporation's  
69 real and tangible personal property owned or rented and used in this state during the taxable  
70 year by the average value of all of the unitary group's real and tangible personal property owned  
71 or rented and used during the taxable year;

72 (B) an amount determined by dividing the total amount paid in this state during the  
73 taxable year by the acquired corporation for compensation by the total compensation paid  
74 everywhere by the unitary group during the taxable year; and

75 (C) an amount determined by:

76 (I) dividing the total sales of the acquired corporation in this state during the taxable  
77 year by the total sales of the unitary group everywhere during the taxable year; and

78 (II) ~~[(Aa)]~~ if the unitary group elects to calculate the fraction for apportioning business  
79 income to this state using the method described in Subsection 59-7-311(2)~~[(d)]~~(b), multiplying  
80 the amount calculated under Subsection (6)(a)(i)(C)(I) by two; or

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

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

87 (ii) if the unitary group is required or elects to calculate the fraction for apportioning

88 business income to this state using the method described in Subsection 59-7-311(3)(c),  
89 calculating an amount determined by dividing the total sales of the acquired corporation in this  
90 state during the taxable year by the total sales of the unitary group everywhere during the  
91 taxable year;

92 (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of  
93 the fraction the unitary group uses to apportion business income to this state:

94 (i) for that taxable year; and

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

96 (c) multiplying the amount calculated under Subsection (6)(b) by the business income  
97 of the unitary group for the taxable year that is subject to apportionment under Section  
98 59-7-311; and

99 (d) calculating the sum of:

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

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

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

103 (B) nonbusiness loss allocable to this state.

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

108 Section 2. Section 59-7-302 is amended to read:

109 **59-7-302. Definitions.**

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

111 (a) "Aircraft type" means a particular model of aircraft as designated by the  
112 manufacturer of the aircraft.

113 (b) "Airline" ~~is as~~ means the same as that term is defined in Section 59-2-102.

114 (c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during  
115 the airline's tax period.

116 (d) "Business income" means income arising from transactions and activity in the  
117 regular course of the taxpayer's trade or business and includes income from tangible and  
118 intangible property if the acquisition, management, and disposition of the property constitutes

119 integral parts of the taxpayer's regular trade or business operations.

120 (e) "Commercial domicile" means the principal place from which the trade or business  
121 of the taxpayer is directed or managed.

122 (f) "Compensation" means wages, salaries, commissions, and any other form of  
123 remuneration paid to employees for personal services.

124 (g) (i) Except as provided in Subsection (1)(g)(ii), "mobile flight equipment" is as  
125 defined in Section 59-2-102.

126 (ii) "Mobile flight equipment" does not include:

127 (A) a spare engine; or

128 (B) tangible personal property described in Subsection 59-2-102(26) owned by an:

129 (I) air charter service; or

130 (II) air contract service.

131 (h) "Nonbusiness income" means all income other than business income.

132 (i) "Optional sales factor weighted taxpayer" means:

133 (i) for a taxpayer that is not a unitary group, regardless of the number of economic  
134 activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales  
135 everywhere generated by economic activities performed by the taxpayer if the economic  
136 activities are classified in a NAICS code within NAICS Subsector 334 of the 2002 or 2007  
137 North American Industry Classification System of the federal Executive Office of the  
138 President, Office of Management and Budget; or

139 (ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the  
140 taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if  
141 the economic activities are classified in a NAICS code within NAICS Subsector 334 of the  
142 2002 or 2007 North American Industry Classification System of the federal Executive Office of  
143 the President, Office of Management and Budget.

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

145 [~~(j)~~] (k) "Sales" means all gross receipts of the taxpayer not allocated under Sections  
146 59-7-306 through 59-7-310.

147 [~~(k)~~] (l) Subject to Subsection (2), "sales factor weighted taxpayer" means:

148 (i) for a taxpayer that is not a unitary group, regardless of the number of economic  
149 activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales

150 everywhere generated by economic activities performed by the taxpayer if the economic  
151 activities are classified in a NAICS code of the 2002 or 2007 North American Industry  
152 Classification System of the federal Executive Office of the President, Office of Management  
153 and Budget, except for:

- 154 (A) a NAICS code within NAICS Sector 21, Mining;
- 155 (B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;
- 156 (C) a NAICS code within NAICS Sector 31-33, Manufacturing;
- 157 (D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;
- 158 (E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector  
159 519, Other Information Services; or

- 160 (F) a NAICS code within NAICS Sector 52, Finance and Insurance; or
- 161 (ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the  
162 taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if  
163 the economic activities are classified in a NAICS code of the 2002 or 2007 North American  
164 Industry Classification System of the federal Executive Office of the President, Office of  
165 Management and Budget, except for~~[-]~~ a NAICS code under Subsections (1)(l)(i)(A) through  
166 (F).

- 167 [~~(A) a NAICS code within NAICS Sector 21, Mining;~~]
- 168 [~~(B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;~~]
- 169 [~~(C) a NAICS code within NAICS Sector 31-33, Manufacturing;~~]
- 170 [~~(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;~~]
- 171 [~~(E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector~~  
172 ~~519, Other Information Services; or]~~

- 173 [~~(F) a NAICS code within NAICS Sector 52, Finance and Insurance;~~]
- 174 [(+) (m) "State" means any state of the United States, the District of Columbia, the  
175 Commonwealth of Puerto Rico, any territory or possession of the United States, and any  
176 foreign country or political subdivision thereof.

- 177 [(m)] (n) "Transportation revenue" means revenue an airline earns from:  
178 (i) transporting a passenger or cargo; or  
179 (ii) from miscellaneous sales of merchandise as part of providing transportation  
180 services.

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

- 183 (i) during the airline's tax period; and  
 184 (ii) from flight stages that originate or terminate in this state.

185 (2) The following apply to Subsection (1)~~[(k)]~~(l):

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

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

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

- 193 (A) as determined in accordance with this part; and  
 194 (B) made during the taxable year for which a taxpayer makes the determination  
 195 required by Subsection (2)(a)(i).

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

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

202 Section 3. Section **59-7-311** is amended to read:

203 **59-7-311. Method of apportionment of business income.**

204 (1) For a taxable year, all business income shall be apportioned to this state by  
 205 multiplying the business income by a fraction calculated as provided in this section.

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

210 ~~[(i) the method described in Subsection (2)(c); or]~~

211 ~~[(ii) the method described in Subsection (2)(d).]~~

212 ~~[(b) Subject to the other provisions of this part, for a taxable year that begins on or after~~  
213 ~~January 1, 2011, a taxpayer, except for a sales factor weighted taxpayer, shall elect to calculate~~  
214 ~~the fraction for apportioning business income to this state under this section using:]~~

215 ~~[(i) the method described in Subsection (2)(c); or]~~

216 ~~[(ii) the method described in Subsection (2)(d).]~~

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

219 ~~[(i) the numerator of the fraction is the sum of:]~~

220 ~~[(A) the property factor as calculated under Section 59-7-312;]~~

221 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

222 ~~[(C) the sales factor as calculated under Section 59-7-317; and]~~

223 ~~[(ii) the denominator of the fraction is three.]~~

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

226 ~~[(i) the numerator of the fraction is the sum of:]~~

227 ~~[(A) the property factor as calculated under Section 59-7-312;]~~

228 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

229 ~~[(C) the product of:]~~

230 ~~[(F) the sales factor as calculated under Section 59-7-317; and]~~

231 ~~[(H) two; and]~~

232 ~~[(ii) the denominator of the fraction is four.]~~

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

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

239 ~~[(i) the numerator of the fraction is the sum of:]~~

240 ~~[(A) the property factor as calculated under Section 59-7-312;]~~

241 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

242 ~~[(C) the product of:]~~



243 ~~[(I) the sales factor as calculated under Section 59-7-317; and]~~  
244 ~~[(H) four; and]~~  
245 ~~[(ii) the denominator of the fraction is six.]~~  
246 ~~[(b) Subject to the other provisions of this part, for the taxable year that begins on or~~  
247 ~~after January 1, 2012, but begins on or before December 31, 2012, a sales factor weighted~~  
248 ~~taxpayer shall calculate the fraction for apportioning business income to this state as follows:]~~  
249 ~~[(i) the numerator of the fraction is the sum of:]~~  
250 ~~[(A) the property factor as calculated under Section 59-7-312;]~~  
251 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~  
252 ~~[(C) the product of:]~~  
253 ~~[(I) the sales factor as calculated under Section 59-7-317; and]~~  
254 ~~[(H) 10; and]~~  
255 ~~[(ii) the denominator of the fraction is 12.]~~  
256 ~~[(c) Subject to the other provisions of this part, for a taxable year that begins on or after~~  
257 ~~January 1, 2013, a sales factor weighted taxpayer shall calculate the fraction for apportioning~~  
258 ~~business income to this state as follows:]~~  
259 ~~[(i) the numerator of the fraction is the sales factor as calculated under Section~~  
260 ~~59-7-317; and]~~  
261 ~~[(ii) the denominator of the fraction is one.]~~  
262 ~~[(4) If a taxpayer calculates the fraction for apportioning business income to this state~~  
263 ~~using a method described in this section:]~~  
264 (2) Subject to the other provisions of this part, a taxpayer, except for a sales factor  
265 weighted taxpayer and an optional sales factor weighted taxpayer, shall calculate the fraction  
266 for apportioning business income to this state using one of the following fractions:  
267 (a) a fraction where:  
268 (i) the numerator of the fraction is the sum of:  
269 (A) the property factor as calculated under Section 59-7-312;  
270 (B) the payroll factor as calculated under Section 59-7-315; and  
271 (C) the sales factor as calculated under Section 59-7-317; and  
272 (ii) the denominator of the fraction is three; or  
273 (b) a fraction where:

274 (i) the numerator of the fraction is the sum of:  
275 (A) the property factor as calculated under Section 59-7-312;  
276 (B) the payroll factor as calculated under Section 59-7-315; and  
277 (C) the sales factor as calculated under Section 59-7-317 multiplied by two; and  
278 (ii) the denominator of the fraction is four.  
279 (3) Subject to the other provisions of this part, a sales factor weighted taxpayer shall  
280 calculate the fraction for apportioning business income to this state using a fraction where:  
281 (a) the numerator of the fraction is the sales factor as calculated under Section  
282 59-7-317; and  
283 (b) the denominator of the fraction is one.  
284 (4) Subject to the other provisions of this part, an optional sales factor weighted  
285 taxpayer shall calculate the fraction for apportioning business income to this state using a  
286 method described in Subsection (2)(a), (2)(b), or (3).  
287 (5) (a) The taxpayer shall determine the method for calculating the fraction for  
288 apportioning business income to this state under this section on or before the due date for filing  
289 the taxpayer's return under this chapter for the taxable year, including extensions[; and].  
290 (b) The method described in Subsection [(4)] (5)(a) is in effect for the [time period:]  
291 taxable year.  
292 [(i) beginning on the first day of the taxpayer's taxable year for which the taxpayer  
293 makes the determination described in Subsection (4)(a); and]  
294 [(ii) ends on the last day of the taxable year described in Subsection (4)(b)(i).]  
295 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
296 commission may make rules providing procedures for a taxpayer to make the election required  
297 by Subsections (2) and (4).  
298 **Section 4. Retrospective operation.**  
299 This bill has retrospective operation for a taxable year beginning on or after January 1,  
300 2016.