

1 **APPORTIONMENT OF BUSINESS INCOME AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Deidre M. Henderson**

5 House Sponsor: Daniel McCay

6

7 **LONG TITLE**

8 **Committee Note:**

9 The Revenue and Taxation Interim Committee recommended this bill.

10 **General Description:**

11 This bill addresses the apportionment of business income for purposes of corporate
12 franchise and income taxes.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ addresses the apportionment of business income for purposes of corporate franchise
16 and income taxes;
17 ▶ repeals obsolete language; and
18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill provides retrospective operation.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **59-7-110**, as last amended by Laws of Utah 2010, Chapter 155

26 **59-7-311**, as last amended by Laws of Utah 2010, Chapter 155



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

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

30 **59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.**

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

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

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

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

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

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

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

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

53 (b) (i) The amount of Utah net loss carried back from a taxable year may not exceed
54 \$1,000,000 in Utah taxable income for each return filed under this chapter in a taxable year.

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

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

58 (5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of

59 another corporation may not deduct any net loss incurred by the acquired corporation prior to
60 the date of acquisition.

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

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

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

69 (a) subject to Subsection (7):

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

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

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

78 (C) an amount determined by:

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

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

84 ~~[(Bb) 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)(a), multiplying the
86 amount calculated under Subsection (6)(a)(i)(C)(I) by four; or]~~

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

90 (ii) if the unitary group is required to calculate the fraction for apportioning business
 91 income to this state using the method described in Subsection 59-7-311(3)[(e)], calculating an
 92 amount determined by dividing the total sales of the acquired corporation in this state during
 93 the taxable year by the total sales of the unitary group everywhere during the taxable year;

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

96 (i) for that taxable year; and

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

98 (c) multiplying the amount calculated under Subsection (6)(b) by the business income
 99 of the unitary group for the taxable year that is subject to apportionment under Section
 100 59-7-311; and

101 (d) calculating the sum of:

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

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

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

105 (B) nonbusiness loss allocable to this state.

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

110 Section 2. Section 59-7-311 is amended to read:

111 **59-7-311. Method of apportionment of business income.**

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

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

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

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

120 ~~[(b) Subject to the other provisions of this part, for a taxable year that begins on or after~~

121 ~~January 1, 2011, a taxpayer, except for a sales factor weighted taxpayer, shall elect to calculate~~
122 ~~the fraction for apportioning business income to this state under this section using:]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 ~~[(E) two; and]~~

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

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

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

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

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

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

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

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

152 ~~[(H) four; and]~~
153 ~~[(ii) the denominator of the fraction is six.]~~
154 ~~[(b) Subject to the other provisions of this part, for the taxable year that begins on or~~
155 ~~after January 1, 2012, but begins on or before December 31, 2012, a sales factor weighted~~
156 ~~taxpayer shall calculate the fraction for apportioning business income to this state as follows:]~~

157 ~~[(i) the numerator of the fraction is the sum of:]~~
158 ~~[(A) the property factor as calculated under Section 59-7-312;]~~
159 ~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~
160 ~~[(C) the product of:]~~
161 ~~[(F) the sales factor as calculated under Section 59-7-317; and]~~
162 ~~[(H) 10; and]~~
163 ~~[(ii) the denominator of the fraction is 12.]~~

164 (2) Subject to the other provisions of this part, a taxpayer, except for a sales factor
165 weighted taxpayer, shall calculate the fraction for apportioning business income to this state
166 using one of the following fractions:

167 (a) a fraction where:
168 (i) the numerator of the fraction is the sum of:
169 (A) the property factor as calculated under Section 59-7-312;
170 (B) the payroll factor as calculated under Section 59-7-315; and
171 (C) the sales factor as calculated under Section 59-7-317; and

172 (ii) the denominator of the fraction is three; or
173 (b) a fraction where:
174 (i) the numerator of the fraction is the sum of:
175 (A) the property factor as calculated under Section 59-7-312;
176 (B) the payroll factor as calculated under Section 59-7-315; and
177 (C) the sales factor as calculated under Section 59-7-317 multiplied by two; and
178 (ii) the denominator of the fraction is four.

179 ~~[(e)] (3) Subject to the other provisions of this part, [for a taxable year that begins on or~~
180 ~~after January 1, 2013;] a sales factor weighted taxpayer shall calculate the fraction for~~
181 ~~apportioning business income to this state as follows:~~

182 ~~[(f)] (a) the numerator of the fraction is the sales factor as calculated under Section~~

183 [59-7-317](#); and
184 [(ii)] (b) the denominator of the fraction is one.
185 (4) If a taxpayer calculates the fraction for apportioning business income to this state
186 using a method described in this section:
187 (a) the taxpayer shall determine the method for calculating the fraction for apportioning
188 business income to this state under this section on or before the due date for filing the
189 taxpayer's return under this chapter for the taxable year, including extensions; and
190 (b) the method described in Subsection (4)(a) is in effect for the time period:
191 (i) beginning on the first day of the taxpayer's taxable year for which the taxpayer
192 makes the determination described in Subsection (4)(a); and
193 (ii) ends on the last day of the taxable year described in Subsection (4)(b)(i).
194 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
195 commission may make rules providing procedures for a taxpayer to make the election required
196 by Subsection (2).
197 Section 3. **Retrospective operation.**
198 This bill has retrospective operation for a taxable year beginning on or after January 1,
199 2016.

Legislative Review Note
Office of Legislative Research and General Counsel