

1 **SALES FACTOR WEIGHTED TAX MODIFICATIONS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: _____

6
7 **LONG TITLE**

8 **General Description:**

9 This bill modifies how a taxpayer determines if the taxpayer is a sales factor weighted
10 taxpayer or an optional sales factor weighted taxpayer.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ defines terms;

14 ▶ describes how a taxpayer determines whether greater than 50% of the taxpayer's
15 economic activities are classified within particular NAICS codes;

16 ▶ requires that a taxpayer that determines that the taxpayer is a sales factor weighted
17 taxpayer for a taxable year beginning on or after January 1, 2017, remain a sales
18 factor weighted taxpayer for subsequent taxable years;

19 ▶ requires that a taxpayer that determines that the taxpayer is an optional sales factor
20 weighted taxpayer and apportions business income using the single sales factor
21 method for a taxable year beginning on or after January 1, 2017, shall become a
22 sales factor weighted taxpayer for subsequent taxable years; and

23 ▶ addresses the timing for a taxpayer to determine if the taxpayer is an optional sales
24 factor weighted taxpayer.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 This bill provides retrospective operation.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-7-302**, as last amended by Laws of Utah 2016, Chapters 311 and 368



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

34 Section 1. Section **59-7-302** is amended to read:

35 **59-7-302. Definitions.**

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

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

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

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

42 (d) "Business income" means income arising from transactions and activity in the
43 regular course of the taxpayer's trade or business and includes income from tangible and
44 intangible property if the acquisition, management, and disposition of the property constitutes
45 integral parts of the taxpayer's regular trade or business operations.

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

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

50 (g) "Excluded NAICS code" means a NAICS code listed in Subsections (1)(n)(i)(A)
51 through (F).

52 (h) "Included NAICS code" means a NAICS code that is not listed in Subsections
53 (1)(n)(A) through (F).

54 ~~[(g)]~~ (i) (i) Except as provided in Subsection (1)~~[(g)]~~(i)(ii), "mobile flight equipment"
55 ~~[is as]~~ means the same as that term is defined in Section 59-2-102.

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

57 (A) a spare engine; or

58 (B) tangible personal property described in Subsection **59-2-102**(27) owned by an~~[-(F)]~~

59 air charter service[;] or [~~(H)~~] air contract service.

60 [~~(H)~~] (j) "Nonbusiness income" means all income other than business income.

61 [~~(I)~~] (k) "Optional sales factor weighted taxpayer" means:

62 (i) for a taxpayer that is not a unitary group, regardless of the number of economic
63 activities the taxpayer performs, a taxpayer [~~having~~] that has greater than 50% of the taxpayer's
64 [~~total sales everywhere generated by economic activities performed by the taxpayer if the~~]
65 economic activities [~~are~~] classified in a NAICS code within NAICS Subsector 334, Computer
66 and Electronic Product Manufacturing, of the 2002 or 2007 North American Industry
67 Classification System of the federal Executive Office of the President, Office of Management
68 and Budget; or

69 (ii) for a taxpayer that is a unitary group, a taxpayer [~~having~~] that has greater than 50%
70 of the taxpayer's [~~total sales everywhere generated by economic activities performed by the~~
71 ~~taxpayer if the~~] economic activities [~~are~~] classified in a NAICS code within NAICS Subsector
72 334, Computer and Electronic Product Manufacturing, of the 2002 or 2007 North American
73 Industry Classification System of the federal Executive Office of the President, Office of
74 Management and Budget.

75 [~~(J)~~] (l) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

76 [~~(K)~~] (m) "Sales" means all gross receipts of the taxpayer not allocated under Sections
77 59-7-306 through 59-7-310.

78 [~~(T)~~] (n) Subject to Subsection (2), "sales factor weighted taxpayer" means:

79 (i) for a taxpayer that is not a unitary group, regardless of the number of economic
80 activities the taxpayer performs, a taxpayer [~~having~~] that has greater than 50% of the taxpayer's
81 [~~total sales everywhere generated by economic activities performed by the taxpayer if the~~]
82 economic activities [~~are~~] classified in a NAICS code of the 2002 or 2007 North American
83 Industry Classification System of the federal Executive Office of the President, Office of
84 Management and Budget, except for:

- 85 (A) a NAICS code within NAICS Sector 21, Mining;
86 (B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;
87 (C) a NAICS code within NAICS Sector 31-33, Manufacturing;
88 (D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;
89 (E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector

90 519, Other Information Services; or

91 (F) a NAICS code within NAICS Sector 52, Finance and Insurance; or

92 (ii) for a taxpayer that is a unitary group, a taxpayer ~~[having]~~ that has greater than 50%

93 of the taxpayer's ~~[total sales everywhere generated by economic activities performed by the~~

94 ~~taxpayer if the]~~ economic activities ~~[are]~~ classified in a NAICS code of the 2002 or 2007 North

95 American Industry Classification System of the federal Executive Office of the President,

96 Office of Management and Budget, except for a NAICS code under Subsections

97 (1)~~(f)~~(n)(i)(A) through (F).

98 ~~(m)~~ (o) "State" means any state of the United States, the District of Columbia, the

99 Commonwealth of Puerto Rico, any territory or possession of the United States, and any

100 foreign country or political subdivision thereof.

101 ~~(n)~~ (p) "Transportation revenue" means revenue an airline earns from:

102 (i) transporting a passenger or cargo; or

103 (ii) from miscellaneous sales of merchandise as part of providing transportation

104 services.

105 ~~(o)~~ (q) "Utah revenue ton miles" means, for an airline, the total revenue ton miles

106 within the borders of this state:

107 (i) during the airline's tax period; and

108 (ii) from flight stages that originate or terminate in this state.

109 (2) The following apply to ~~[Subsection]~~ Subsections (1)~~(f)~~(k) and (n):

110 (a) (i) Subject to the other provisions of this Subsection (2), a taxpayer shall ~~[for each~~

111 ~~taxable year]~~ determine for a taxable year whether the taxpayer is a sales factor weighted

112 taxpayer.

113 (ii) A taxpayer shall make the determination required by Subsection (2)(a)(i) before the

114 due date for filing the taxpayer's return under this chapter for the taxable year, including

115 extensions.

116 (iii) For purposes of making the determination required by Subsection (2)(a)(i), ~~[total~~

117 ~~sales everywhere include only the total sales everywhere:]~~ a taxpayer shall determine whether

118 greater than 50% of the taxpayer's economic activities are classified in included NAICS codes

119 as provided in Subsections (2)(a)(iv) through (vi).

120 ~~[(A) as determined in accordance with this part; and]~~

121 ~~[(B) made during the taxable year for which a taxpayer makes the determination~~
122 ~~required by Subsection (2)(a)(i).]~~

123 (iv) A taxpayer shall calculate the following three numbers, taking into account all of
124 the taxpayer's establishments and all of the taxpayer's economic activities, regardless of
125 whether the taxpayer eliminates intercompany sales or intercompany transactions for other
126 purposes on the taxpayer's income tax return:

127 (A) the number reached by dividing the total number of employees attributable to
128 economic activities that are classified in included NAICS codes by the total number of
129 employees attributable to all of the taxpayer's economic activities;

130 (B) the number reached by dividing the total compensation of the employees and
131 independent contractors attributable to economic activities that are classified in included
132 NAICS codes by the total compensation of the employees and independent contractors
133 attributable to all of the taxpayer's economic activities; and

134 (C) the number reached by dividing the total costs attributable to economic activities
135 that are classified in included NAICS codes by the total costs attributable to all of the
136 taxpayer's economic activities.

137 (v) The taxpayer shall calculate an average of the numbers calculated in accordance
138 with Subsection (2)(a)(iv) by:

139 (A) adding together the numbers calculated in accordance with Subsection (2)(a)(iv);
140 and

141 (B) dividing the sum calculated in Subsection (2)(a)(v)(A) by three.

142 (vi) If the average calculated in Subsection (2)(a)(v) is greater than .50, the taxpayer is
143 a sales factor weighted taxpayer.

144 (vii) A taxpayer that is a sales factor weighted taxpayer for a taxable year beginning on
145 or after January 1, 2017, shall remain, for subsequent taxable years, a sales factor weighted
146 taxpayer, regardless of whether the taxpayer continues to have greater than 50% of the
147 taxpayer's economic activities classified in included NAICS codes.

148 (b) (i) (A) Subject to other provisions of this Subsection (2), for each taxable year, a
149 taxpayer that is not a sales factor weighted taxpayer may determine whether the taxpayer is an
150 optional sales factor weighted taxpayer.

151 (B) A taxpayer that is not a sales factor weighted taxpayer shall determine that the

152 taxpayer is an optional sales factor weighted taxpayer before the taxpayer may use the
153 apportionment options described in Subsection 59-7-311(4).

154 (ii) A taxpayer making the determination described in Subsection (2)(b)(i) shall make
155 the determination before the due date for filing the taxpayer's return under this chapter for the
156 taxable year, including extensions.

157 (iii) For purposes of making the determination described in Subsection (2)(b)(i), a
158 taxpayer shall determine whether greater than 50% of the taxpayer's economic activities are
159 classified in a NAICS code within NAICS Subsector 334, Computer and Electronic Product
160 Manufacturing, as provided in Subsections (2)(b)(iv) through (vi).

161 (iv) A taxpayer shall calculate the following three numbers, taking into account all of
162 the taxpayer's establishments and all of the taxpayer's economic activities, regardless of
163 whether the taxpayer eliminates intercompany sales or intercompany transactions for other
164 purposes on the taxpayer's income tax return:

165 (A) the number reached by dividing the number of employees attributable to economic
166 activities that are classified in a NAICS code within NAICS Subsector 334, Computer and
167 Electronic Product Manufacturing, by the total number of employees attributable to all of the
168 taxpayer's economic activities;

169 (B) the number reached by dividing the total compensation of the employees and
170 independent contractors attributable to economic activities that are classified in a NAICS code
171 within NAICS Subsector 334, Computer and Electronic Product Manufacturing, by the total
172 compensation of the employees and independent contractors attributable to all of the taxpayer's
173 economic activities; and

174 (C) the number reached by dividing the costs attributable to economic activities that
175 are classified in a NAICS code within NAICS Subsector 334, Computer and Electronic Product
176 Manufacturing, by the costs attributable to all of the taxpayer's economic activities.

177 (v) The taxpayer shall calculate an average of the numbers calculated in accordance
178 with Subsection (2)(b)(iv) by:

179 (A) adding together the numbers calculated in accordance with Subsection (2)(b)(iv);

180 and

181 (B) dividing the sum calculated in Subsection (2)(b)(v)(A) by three.

182 (vi) If the average calculated in Subsection (2)(b)(v) is greater than .50, the taxpayer is

183 an optional sales factor weighted taxpayer.

184 (vii) An optional sales factor weighted taxpayer that apportions business income using
185 the apportionment method described in Subsection 59-7-311(3) for a taxable year beginning on
186 or after January 1, 2017, shall apportion, for subsequent taxable years, as though the taxpayer
187 were a sales factor weighted taxpayer, regardless of whether the taxpayer continues to meet the
188 definition of optional sales factor weighted taxpayer or meets the definition of sales factor
189 weighted taxpayer.

190 ~~[(b)]~~ (c) A taxpayer that files a return as a unitary group for a taxable year is considered
191 to be a unitary group for that taxable year.

192 ~~[(c)]~~ (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
193 Act, the commission may define the term "economic activity" consistent with the use of the
194 term "activity" in the 2007 North American Industry Classification System of the federal
195 Executive Office of the President, Office of Management and Budget.

196 Section 2. **Retrospective operation.**

197 This bill has retrospective operation for taxable year beginning on or after January 1,
198 2017.

Legislative Review Note
Office of Legislative Research and General Counsel