

## SB0229S01 compared with SB0229

~~{deleted text}~~ shows text that was in SB0229 but was deleted in SB0229S01.

Inserted text shows text that was not in SB0229 but was inserted into SB0229S01.

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Senator Wayne A. Harper proposes the following substitute bill:

### SALES FACTOR WEIGHTED TAX MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies ~~{how a taxpayer determines if the taxpayer is a sales factor weighted taxpayer or an optional sales factor weighted taxpayer}~~ the business income apportionment provisions.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes how a taxpayer determines whether greater than 50% of the taxpayer's economic activities are classified within particular NAICS codes;
- ▶ ~~{requires that a taxpayer that determines that the taxpayer is a sales factor weighted taxpayer for a taxable year beginning on or after January 1, 2017, remain a sales factor weighted taxpayer for subsequent taxable years;~~

## SB0229S01 compared with SB0229

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

→ } addresses the timing for a taxpayer to determine if the taxpayer is an optional sales factor weighted taxpayer:

▶ requires that, for a taxable year beginning on or after January 1, 2018, a taxpayer that apportions business income using the single sales factor method for the previous taxable year use the single sales factor method of apportionment for the current taxable year; and

▶ provides the circumstances where a taxpayer that previously apportioned business income using the single sales factor method may change the method of apportionment.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides retrospective operation.

### Utah Code Sections Affected:

AMENDS:

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

**59-7-311**, as last amended by Laws of Utah 2016, Chapters 311 and 323

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

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

#### **59-7-302. Definitions.**

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

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

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

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

## SB0229S01 compared with SB0229

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

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

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

(g) ~~(i)~~ "Excluded NAICS code" means a NAICS code ~~listed~~ of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, within:

(A) NAICS Sector 21, Mining;

(B) NAICS Industry Group 2212, Natural Gas Distribution;

(C) NAICS Sector 31-33, Manufacturing;

(D) NAICS Sector 48-49, Transportation and Warehousing;

(E) except as provided in ~~Subsections~~ Subsection (1)(~~n~~g)(~~i~~)(A) through (F)ii,

NAICS Sector 51, Information; or

(F) NAICS Sector 52, Finance and Insurance.

(ii) "Excluded NAICS code" does not include NAICS Subsector 519, Other Information Services.

(h) "Included NAICS code" means a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, that is not ~~listed in Subsections (1)(n)(A) through (F)~~an excluded NAICS code.

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

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

(A) a spare engine; or

(B) tangible personal property described in Subsection 59-2-102(27) owned by an~~(+)~~ air charter service~~;~~ or ~~(H)~~ air contract service.

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

## SB0229S01 compared with SB0229

~~(f)~~ ~~(k)~~ "Optional sales factor weighted taxpayer" means:

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

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

(1) (i) "Qualifying status change" means that an entity with business income:

(A) acquires another entity;

(B) is acquired by another entity; or

(C) merges with another entity.

(ii) "Qualifying status change" does not include any change in the structure, ownership, or management of the entity with business income other than a change described in Subsection (1)(i).

~~(f)~~ ~~(fm)~~ "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

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

~~(f)~~ ~~(fo)~~ Subject to Subsection (2), "sales factor weighted taxpayer" means:

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

## SB0229S01 compared with SB0229

~~[(A) a NAICS code within NAICS Sector 21, Mining;]~~

~~[(B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;]~~

~~[(C) a NAICS code within NAICS Sector 31-33, Manufacturing;]~~

~~[(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;]~~

~~[(E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector 519, Other Information Services; or]~~

~~[(F) a NAICS code within NAICS Sector 52, Finance and Insurance; or]~~

(ii) for a taxpayer that is a unitary group, a taxpayer ~~[having]~~ that has greater than 50% of the taxpayer's ~~[total sales everywhere generated by economic activities performed by the taxpayer if the]~~ economic activities ~~[are]~~ everywhere classified in ~~[a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for a NAICS code under Subsections (1) (f) (1) (j) (n) (i) (A) through (F)]~~ included NAICS codes.

~~[(m)]~~ ~~(f)(p)~~ "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

~~[(n)]~~ ~~(f)(q)~~ "Transportation revenue" means revenue an airline earns from:

(i) transporting a passenger or cargo; or

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

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

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

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

~~[(2) The following apply to (f) Subsection (j) Subsections (1) (f) (1)]~~

~~(k) and (n)(2)~~

~~(a)~~ (i) Subject to the other provisions of this Subsection (2), a taxpayer shall ~~[for each taxable year]~~ determine for a taxable year whether the taxpayer is a sales factor weighted taxpayer if the taxpayer did not apportion business income using the method described in Subsection 59-7-311(3) for the previous taxable year.

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

## SB0229S01 compared with SB0229

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

(iii) For purposes of making the determination required by Subsection (2)(a)(i), ~~[total sales everywhere include only the total sales everywhere:]~~ a taxpayer shall determine whether greater than 50% of the taxpayer's economic activities **everywhere** are classified in included NAICS codes as provided in Subsections (2)(a)(iv) through (vi).

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

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

(iv) A taxpayer shall calculate the following ~~{three numbers}~~**two fractions**, taking into account ~~{all of}~~ the taxpayer's establishments and ~~{all of}~~ the taxpayer's economic activities **everywhere**, regardless of whether the taxpayer eliminates intercompany sales or intercompany transactions for other purposes on the taxpayer's income tax return:

(A) the ~~{number}~~**fraction** reached by ~~{dividing the total number of employees}~~**making the calculation described in Subsection 59-7-312, except that the numerator shall be the property everywhere that is** attributable to economic activities that are classified in included NAICS codes~~{ by the total number of employees attributable to all of the taxpayer's economic activities:~~

~~—— (B) the number reached by dividing the total compensation of the employees and independent contractors}; and~~

~~(B) the fraction reached by making the calculation described in Subsection 59-7-315, except that the numerator shall be the payroll everywhere that is~~ attributable to economic activities that are classified in included NAICS codes~~{ by the total compensation of the employees and independent contractors attributable to all of the taxpayer's economic activities:~~ and

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

(v) The taxpayer shall calculate an average of the ~~{numbers}~~**fractions** calculated in accordance with Subsection (2)(a)(iv) by:

(A) adding together the ~~{numbers}~~**fractions** calculated in accordance with Subsection

## SB0229S01 compared with SB0229

(2)(a)(iv); and

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

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

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

~~(b) (i) (A) Subject to other provisions of this Subsection (2), ~~for each taxable year,~~~~  
a

a taxpayer that is not a sales factor weighted taxpayer may determine ~~for a taxable year~~ whether the taxpayer is an optional sales factor weighted taxpayer~~.~~

~~(B) A ~~if the~~ taxpayer ~~that is~~ did not ~~a sales factor weighted~~ apportion business income using the method described in Subsection 59-7-311(3) for the previous taxable year.~~

(ii) A taxpayer shall ~~determine that the taxpayer is an optional sales factor weighted taxpayer before~~ make the determination described in Subsection (2)(b)(i) before:

(A) the taxpayer may use the apportionment options described in Subsection 59-7-311(4) ~~;~~ and

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

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

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

(A) the ~~number reached by dividing the number of employees~~ fraction reached by making the calculation described in Subsection 59-7-312, except that the numerator shall be the

## SB0229S01 compared with SB0229

property everywhere attributable to economic activities that are classified in a NAICS code within ~~{NAICS}~~ Subsector 334, Computer and Electronic Product Manufacturing ~~{, by the total number of employees attributable to all of the taxpayer's economic activities;~~

~~—— (B) the number reached by dividing the total compensation of the employees and independent contractors}; and~~

(B) the fraction reached by making the calculation described in Subsection 59-7-315, except that the numerator shall be the payroll everywhere attributable to economic activities that are classified in a NAICS code within ~~{NAICS}~~ Subsector 334, Computer and Electronic Product Manufacturing ~~{, by the total compensation of the employees and independent contractors attributable to all of the taxpayer's economic activities; and~~

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

(v) The taxpayer shall calculate an average of the ~~{numbers}~~ fractions calculated in accordance with Subsection (2)(b)(iv) by:

(A) adding together the ~~{numbers}~~ fractions calculated in accordance with Subsection (2)(b)(iv); and

(B) dividing the sum calculated in Subsection (2)(b)(v)(A) by ~~{three}~~ two.

(vi) If the average calculated in Subsection (2)(b)(v) is greater than .50, the taxpayer is an optional sales factor weighted taxpayer.

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

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

~~[(e)] (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may define the term "economic activity" consistent with the use of the term "activity" in the 2007 North American Industry Classification System of the federal~~



## SB0229S01 compared with SB0229

Executive Office of the President, Office of Management and Budget.

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

### 59-7-311. Method of apportionment of business income.

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

(2) Subject to the other provisions of this part, a taxpayer, except for a sales factor weighted taxpayer [and], an optional sales factor weighted taxpayer, and a taxpayer subject to Subsection (5), shall calculate the fraction for apportioning business income to this state using one of the following fractions:

(a) a fraction where:

(i) the numerator of the fraction is the sum of:

(A) the property factor as calculated under Section 59-7-312;

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

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

(ii) the denominator of the fraction is three; or

(b) a fraction where:

(i) the numerator of the fraction is the sum of:

(A) the property factor as calculated under Section 59-7-312;

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

(C) the sales factor as calculated under Section 59-7-317 multiplied by two; and

(ii) the denominator of the fraction is four.

(3) Subject to the other provisions of this part, a sales factor weighted taxpayer shall calculate the fraction for apportioning business income to this state using a fraction where:

(a) the numerator of the fraction is the sales factor as calculated under Section 59-7-317; and

(b) the denominator of the fraction is one.

(4) [Subject] Except as provided in Subsection (5) and subject to the other provisions of this part, an optional sales factor weighted taxpayer shall calculate the fraction for apportioning business income to this state using a method described in Subsection (2)(a), (2)(b), or (3).

(5) Except as provided in Subsection (6), for a taxable year beginning on or after

## SB0229S01 compared with SB0229

January 1, 2018, a taxpayer that apportions business income using the method described in Subsection (3) for the previous taxable year shall apportion income using the method described in Subsection (3) for the current taxable year.

(6) (a) A taxpayer that is subject to Subsection (5) may make a new determination of the taxpayer's method of apportionment for a taxable year in which a qualifying status change occurs.

(b) Once a taxpayer described in Subsection (6)(a) apportions business income using the method described in Subsection (3) after a qualifying status change, the provisions of Subsection (5) apply.

~~[(5)]~~ (7) (a) The taxpayer shall determine the method for calculating the fraction for apportioning business income to this state under this section on or before the due date for filing the taxpayer's return under this chapter for the taxable year, including extensions.

(b) The method described in Subsection ~~[(5)]~~ (7)(a) is in effect for the taxable year.

~~[(6)]~~ (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for a taxpayer to make the election required by Subsections (2) and (4).

Section ~~{2}~~3. **Retrospective operation.**

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

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**Legislative Review Note**

**Office of Legislative Research and General Counsel†**